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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE-2008-BT-STD-0015]

RIN 1904-AB86

Energy Conservation Program: Energy Conservation Standards for Walk-In Coolers and Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; technical amendment.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, requires the Department of Energy (DOE), among other things, to prescribe performance-based energy conservation standards for walk-in coolers and walk-in freezers. On June 3, 2014, DOE complied with this requirement. Recent litigation regarding these standards resulted in a settlement agreement between DOE and the other parties to that litigation. Consistent with the parties' settlement agreement, the United States Court of Appeals for the Fifth Circuit subsequently vacated six specific standards set forth in the June 2014 rule. DOE is amending the CFR to reflect the court's order vacating the six standards found in DOE's regulations pertaining to certain refrigeration systems used in walk-in cooler and walk-in freezer applications.

DATES: This action is effective on November 12, 2015. However, the court order had legal effect immediately upon its filing on August 10, 2015. Compliance with the remaining standards from the June 2014 final rule that were not vacated by the court order continues to be required on June 5, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of

Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-5B, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-6590. Email: Ashley.Armstrong@ee.doe.gov.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-8145. Email: Michael.Kido@hq.doe.gov.

SUPPLEMENTARY INFORMATION: DOE published a final rule, 79 FR 32050 (June 3, 2014), that set nineteen energy conservation standards pertaining to walk-in coolers and walk-in freezers (collectively, "walk-ins" or "WICFs"). A walk-in, at its basic level, is a refrigerated box, with a total chilled storage area of less than 3,000 square feet. The standards promulgated by DOE pertained to the primary components that comprise a walk-in—*i.e.* panels, doors, and the refrigeration systems. The panels and doors of a walk-in comprise the box, while the refrigeration system provides the cooling air to cool the interior of the box.

The Air-Conditioning, Heating and Refrigeration Institute ("AHRI") and Lennox International, Inc. (a manufacturer of WICF refrigeration systems) filed petitions for review of DOE's final rule and DOE's subsequent denial of a petition for reconsideration of the rule with the United States Court of Appeals for the Fifth Circuit. *Lennox Int'l, Inc. v. Dep't of Energy*, Case No. 14-60535 (5th Cir.). A number of other WICF refrigeration system manufacturers—Rheem Manufacturing Co., Heat Transfer Products Group, and Hussmann Corp.—along with the Air Conditioning Contractors of America (a trade association representing contractors who install WICF refrigeration systems) intervened on the petitioners' behalf, while the Natural Resources Defense Council—representing itself, the American Council for an Energy-Efficient Economy, and the Texas Ratepayers' Organization to Save Energy—intervened on behalf of DOE. As a result of this litigation, a settlement agreement was reached to address, among other things, six of the refrigeration system standards.

The controlling court order from the Fifth Circuit, which was issued on August 10, 2015, vacates those six standards. These vacated standards relate to (1) the two energy conservation standards applicable to multiplex condensing refrigeration systems operating at medium and low temperatures and (2) the four energy conservation standards applicable to dedicated condensing refrigeration systems operating at low temperatures. *See* 10 CFR 431.306(e) (codifying these six standards, together with four distinct standards applicable to dedicated condensing refrigeration systems operating at medium temperatures).

The final rule on review also established thirteen other energy conservation standards applicable to other components of walk-in coolers and walk-in freezers: (1) Four standards applicable to dedicated condensing refrigeration systems operating at medium temperatures; (2) three standards applicable to panels; and (3) six standards applicable to doors. *See* 79 FR at 32051-32052 (Table I.1) and 32123-32124 (codified at 10 CFR 431.306(a), (c)-(e)). These standards have not been vacated and remain subject to the June 5, 2017 compliance date prescribed by the June 2014 final rule.

This final rule is not subject to the requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553(b)(B). DOE finds good cause to waive the requirement to provide prior notice and an opportunity for public comment as such procedure is unnecessary. DOE must comply with the order of a Federal court, and has no discretion to do otherwise. In implementation of that order, DOE is vacating (1) the two energy conservation standards applicable to multiplex condensing refrigeration systems operating at medium and low temperatures and (2) the four energy conservation standards applicable to dedicated condensing refrigeration systems operating at low temperatures. Comments suggesting any other course would serve no useful purpose. DOE notes it is also actively engaged in a negotiated rulemaking to address the standards for these six classes of refrigeration systems.

Approval of the Office of the Secretary
 The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on November 4, 2015.

Kathleen B. Hogan,

Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE amends part 431 of

chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 431.306 is amended by revising paragraph (e) to read as follows:

§ 431.306 Energy conservation standards and their effective dates.

* * * * *

(e) *Walk-in cooler and freezer refrigeration systems.* All walk-in cooler and walk-in freezer refrigeration systems manufactured starting on June 5, 2017, must satisfy the following standards:

Class descriptor	Class	Equations for minimum AWEF (Btu/W-h)
Dedicated Condensing, Medium Temperature, Indoor System, <9,000 Btu/h Capacity ..	DC.M.I, <9,000	5.61
Dedicated Condensing, Medium Temperature, Indoor System, ≥9,000 Btu/h Capacity ..	DC.M.I, ≥9,000	5.61
Dedicated Condensing, Medium Temperature, Outdoor System, <9,000 Btu/h Capacity ..	DC.M.O, <9,000	7.60
Dedicated Condensing, Medium Temperature, Outdoor System, ≥9,000 Btu/h Capacity ..	DC.M.O, ≥9,000	7.60

[FR Doc. 2015–28728 Filed 11–10–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1658; Directorate Identifier 2015–NE–18–AD; Amendment 39–18320; AD 2015–23–04]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all General Electric Company (GE) GENx–1B turbofan engine models. This AD was prompted by reports of GENx–1B engine oil loss. This AD requires removal and replacement of the non-conforming ball valve in the oil filler cap. We are issuing this AD to prevent loss of engine oil, which could lead to failure of one or more engines, loss of thrust control, and damage to the airplane.

DATES: This AD is effective December 17, 2015.

ADDRESSES: For service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH

45215; phone: 513–552–3272; email: gae.aoc@ge.com. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

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–2015–1658; 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Christopher McGuire, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7120; fax: 781–238–7199; email: chris.mcguire@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all GE GENx–1B turbofan engine models. The NPRM published in the **Federal Register** on June 17, 2015 (80 FR 34560). The NPRM was prompted by multiple reports of engine oil loss and resultant flight plan diversions. The NPRM proposed to require removal and replacement of the non-conforming ball valve in the oil filler cap. We are issuing this AD to correct the unsafe condition on these products.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (80 FR 34560, June 17, 2015) and the FAA’s response to each comment.

Support for the NPRM

One individual commenter expressed support for the NPRM (80 FR 34560, June 17, 2015).

Request To Change Applicability

American Airlines (American) requested that paragraph (c) Applicability be changed. American stated that the part number and the post-SB markings are located on the oil filler cap scupper not on the oil filler cap itself. American indicated that this change would improve clarity and accomplishment of the AD.

We agree. We revised paragraph (c), Applicability, of this AD to read: "This AD applies to all General Electric Company (GE) GENx-1B model turbofan engines with oil filler cap, part number (P/N) 2349M62G01, installed, that do not contain any of the following markings after the P/N on the oil filler cap scupper: "P/M BALL PP," or "RW," or "79-0022."

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information

We reviewed GE GENx-1B Service Bulletin (SB) No. 79-0022, Revision 1, dated May 13, 2015. The SB describes procedures for removing and replacing the ball valve in the oil filler cap.

Costs of Compliance

We estimate that this AD affects 86 engines installed on airplanes of U.S. registry. We also estimate that it will take about 1 hour per engine to comply with this AD. The average labor rate is \$85 per hour. Required parts cost about \$11 per engine. Based on these figures, we estimate the cost of the AD to U.S. operators to be \$8,256.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015-23-04 General Electric Company:
Amendment 39-18320; Docket No. FAA-2015-1658; Directorate Identifier 2015-NE-18-AD.

(a) Effective Date

This AD is effective December 17, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all General Electric Company (GE) GENx-1B model turbofan engines with oil filler cap, part number (P/N) 2349M62G01, installed, that do not contain any of the following markings after the P/N on the oil filler cap scupper: "P/M BALL PP," or "RW," or "79-0022."

(d) Unsafe Condition

This AD was prompted by reports of GENx-1B engine oil loss. We are issuing this AD to prevent loss of engine oil, which could lead to failure of one or more engines, loss of thrust control, and damage to the airplane.

(e) Compliance

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

(1) Within 360 cycles in service after the effective date of this AD, remove the ball valve, P/N 2349M68P01, from the affected oil filler cap and replace with a part eligible for installation.

(2) Reserved.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: ANE-AD-AMOC@faa.gov.

(g) Related Information

(1) For more information about this AD, contact Christopher McGuire, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781-238-7120; fax: 781-238-7199; email: chris.mcguire@faa.gov.

(2) GE GENx-1B SB No. 79-0022, Revision 1, dated May 13, 2015, which is not incorporated by reference in this AD, can be obtained from GE using the contact information in paragraph (g)(3) of this AD.

(3) For service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513-552-3272; email: gae.aoc@ge.com.

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

Issued in Burlington, Massachusetts, on November 4, 2015.

Carlos Pestana,

Acting Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2015-28747 Filed 11-10-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2014-0454; Directorate Identifier 2013-NM-138-AD; Amendment 39-18298; AD 2015-21-06]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2002-07-08 for certain The Boeing Company

Model 737 airplanes. AD 2002–07–08 required repetitive inspections for cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage; repair of any cracking found; modification of the fuselage lap joints at certain locations, which terminated the repetitive inspections of the modified areas; and replacement of a certain preventive modification with an improved modification. This new AD adds repetitive inspections for cracking at certain window corner fastener holes, a preventive modification, and repair if necessary. This AD was prompted by the FAA's determination that certain modifications of the fuselage lap joints do not provide an adequate level of safety, and the subsequent discovery of cracks in additional fastener locations in the window belt skin panels, adjacent stringers, and window frames in locations outside the previous inspection area. We are issuing this AD to detect and correct fatigue cracking of the fuselage lap joints and window belt skin panels, which could result in reduced structural integrity and sudden decompression of the airplane.

DATES: This AD is effective December 17, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 17, 2015.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of May 17, 2002 (67 FR 17917, April 12, 2002).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2014–0454.

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–2014–0454; 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Jennifer Tsakoumakis, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5264; fax: 562–627–5210; email: Jennifer.Tsakoumakis@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002). AD 2002–07–08 applied to certain The Boeing Company Model 737 airplanes. The NPRM published in the **Federal Register** on July 23, 2014 (79 FR 42710). The NPRM was prompted by the FAA's determination that certain modifications of the fuselage lap joints do not provide an adequate level of safety, and the subsequent discovery of cracks in additional fastener locations in the window belt skin panels, adjacent stringers and window frames in locations outside the previous inspection area. The NPRM proposed to continue to require repetitive inspections for cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage; repair of any cracking found; modification of the fuselage lap joints at certain locations, which would terminate the repetitive inspections of the modified areas; and replacement of a certain preventive modification with an improved modification. The NPRM also proposed to require repetitive inspections for cracking at certain window corner fastener holes, a preventive modification, and repair if necessary. We are issuing this AD to detect and correct fatigue cracking of the fuselage lap joints and window belt skin panels, which could result in reduced structural integrity and sudden decompression of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 42710,

July 23, 2014) and the FAA's response to each comment.

Request To Identify New Inspection Locations

Boeing requested that we revise the preamble of the NPRM (79 FR 42710, July 23, 2014), by adding references to new inspection locations on the window belt skin panels. Boeing pointed out that the NPRM preamble defined structure that has been found to crack since release of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002). Boeing also indicated that Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, provides inspections for skin cracking at nine additional fastener holes in the corners of certain passenger windows from what is mandated by AD 2002–07–08.

We agree that clarification is necessary. We have added the description of the new inspection locations in the **SUMMARY** of this final rule accordingly. The unspecified inspection areas were accounted for in paragraph (p) of the proposed AD (79 FR 42710, July 23, 2014), which is retained in this AD.

Request To Remove Post Repair/Modification Requirements

Boeing requested that we revise the NPRM (79 FR 42710, July 23, 2014) to remove the “post-repair/alteration and butt joint repetitive inspections” requirement as specified in paragraph (r) of the proposed AD. Boeing pointed out that one of the proposed actions, “post-repair/alteration and butt joint repetitive inspections,” defined in paragraph (r) of the proposed AD, refers to damage-tolerance-based structural post-repair/post-alteration inspections. Boeing also stated that the inspections are provided in the service bulletin for operators' use to comply with the operational requirements of 14 CFR part 121.1109 and Part 129.109 and, therefore, the inspections do not need to be mandated separately in the NPRM.

We agree with the request. As Boeing stated, the inspections that were specified in paragraph (r) of the proposed AD (79 FR 42710, July 23, 2014) may be used in support of compliance with section 121.1109(c)(2) or 129.109(b)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 129.109(b)(2)). However, this AD does not require those post-modification inspections. We have therefore removed paragraph (r) of the proposed AD and redesignated subsequent paragraphs accordingly. We have also revised the **SUMMARY** of this final rule to remove reference to the inspections.

Request To Reference Related AD

Boeing requested that we clarify the “Difference Between the Proposed AD and the Service Information” section of the NPRM (79 FR 42710, July 23, 2014), by adding a reference to AD 2002–07–11, Amendment 39–12705 (67 FR 17931, April 12, 2002), for Model 737 airplanes, line numbers 1 through 291 inclusive. Boeing pointed out that the “Difference Between the Proposed AD and the Service Information” section of the NPRM (79 FR 42710, July 23, 2014) defined the applicability of the NPRM as Model 737 airplanes, line numbers 292 through 2565 inclusive, and explained that Model 737 airplanes, line numbers 1 through 291 inclusive, have been addressed by AD 2003–23–03, Amendment 39–13367 (68 FR 64980, November 18, 2003). Boeing also indicated that AD 2002–07–11, Amendment 39–12705 (67 FR 17931, April 12, 2002), addresses Model 737 airplanes line numbers 1 through 291 inclusive, and mandates the actions defined in Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001.

Although the “Difference Between the Proposed AD and the Service Information” section of the NPRM (79 FR 42710, July 23, 2014) is not restated in this final rule, we agree with the commenter’s clarification of the applicability. Paragraph (c) of this AD is retained as proposed in the NPRM, and no change has been made to this AD regarding this issue.

Request for Additional Exception

Boeing requested that we clarify paragraph (g) of the proposed AD (79 FR 42710, July 23, 2014), to include an additional exception. Boeing pointed out that paragraph (g) of the proposed AD provided an exception for paragraph (h) of the proposed AD to address lap joint modification (repair) instructions for certain lap joint areas on 737–200 and 737–200C airplanes. Boeing also indicated that paragraph (q)(2) of the proposed AD addresses an optional terminating action, window belt replacement for 737–300 and 737–500 airplanes, for the lap joint modification. Boeing also stated that paragraph (q)(2) of the proposed AD should be included as an exception for the lap joint modification (repair) defined in paragraph (g) of the proposed AD.

We agree with the request for an additional exception. We revised paragraph (g) of this AD to include a reference to paragraph (q)(2) of this AD as an exception.

Request for New Exception

Boeing requested that we clarify paragraph (m) of the proposed AD (79 FR 42710, July 23, 2014), to include an exception. Boeing indicated that Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, added an optional window belt skin panel replacement as terminating action for the S–10 and S–14 lap joint inspections and for the window corner inspections on Model 737–300 and 737–500 airplanes. Boeing also stated that paragraph (q) of the proposed AD addressed the optional terminating action, and that follow-on inspections are also necessary for the optional window belt skin panel replacement, and paragraph (q) of the proposed AD should be added as an exception to paragraph (m) of the proposed AD.

We disagree with the request to include an exception. Paragraph (q) of this AD is an optional action and terminates only paragraph (g) of this AD. If an operator chooses to use the modification option in paragraph (q) of this AD to do the repair required by paragraph (g) of this AD, the requirements of paragraph (m) of this AD have not been terminated, and those inspections must be accomplished. We have not changed this AD regarding this issue.

Request for Additional Instruction

Boeing requested that we clarify paragraph (m) of the proposed AD (79 FR 42710, July 23, 2014), to include instruction for any crack found by the inspections. Boeing stated that paragraph (m) of the proposed AD contains follow-on inspections of the lap joint modification, which are contained in the Compliance and Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013. Boeing also stated that if any crack is found during the follow-on inspections, the Compliance section of Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, instructs operators to contact Boeing for repair instructions; therefore, reference to paragraph (s)(2) of the proposed AD should be added to paragraph (m) of the proposed AD.

We agree with the request to include instruction for any crack found by the inspections. The instructions for repair were inadvertently omitted in paragraph (m) of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002). The associated service information recommended that this repair be done by contacting Boeing for instructions. However paragraph (s)(2) of the proposed AD (79 FR 42710, July 23,

2014) specifically directed operators to contact the FAA for instructions when the service information specified to contact Boeing. We revised paragraph (m) of this AD to refer to paragraph (t) of this AD, which provides directions to request approval of an alternative method of compliance (AMOC).

Request To Remove Reference to Paragraphs (m) and (n) of the Proposed AD (79 FR 42710, July 23, 2014)

Boeing requested that we clarify paragraph (o) of the proposed AD (79 FR 42710, July 23, 2014), by removing references to paragraphs (m) and (n) of the proposed AD. Boeing indicated that paragraph (o) of the proposed AD addresses repair of crack damage and references PART II of the Accomplishment Instructions of Boeing Service Bulletin SB 737–53A1177, Revision 7, dated June 14, 2013. Boeing also stated that PART II of Boeing Service Bulletin SB 737–53A1177, Revision 7, dated June 14, 2013, provides instructions for repair of cracks found in the lower skin of the lower row of the production lap joint, which could be found by the inspections defined in paragraphs (i), (j), and (k) of the proposed AD. Boeing pointed out that cracks found by the inspections in paragraphs (m) and (n) of the proposed AD are addressed individually by the same paragraphs respectively (with changes to paragraph (m) of the proposed AD, as discussed in the previous comment); therefore, repair of any crack found during the inspections in paragraphs (m) and (n) of the proposed AD should not be included in paragraph (o) of the proposed AD.

We agree with the request to revise paragraph (o) of this AD (79 FR 42710, July 23, 2014) to remove references to paragraphs (m) and (n) of the AD, for the reasons provided by the commenter. We revised paragraph (o) of this AD accordingly.

Request To Revise Paragraph (q)(1) of the Proposed AD (79 FR 42710, July 23, 2014)

Boeing requested that we clarify paragraph (q)(1) of the proposed AD (79 FR 42710, July 23, 2014), by revising the wording for consistency with paragraph (q)(2) of the proposed AD, adding references to inspections in paragraph (n) of the proposed AD that are terminated by the actions in paragraph (q)(2) of the proposed AD, and adding wording to limit the number of window inspections that can be terminated by the replacement panel. Boeing pointed out that paragraphs (q)(1) and (q)(2) of the proposed AD address the same action, replacement of window belt skin

panels. Boeing also pointed out that the inspections in paragraph (n) of the proposed AD, Retained Repetitive HFEC Inspections of the Window Corners, can also be terminated by replacement of the window belt panel and therefore, wording should be added to paragraph (q)(1) of the proposed AD to ensure inspections would only be terminated at window corners common to the replaced panel.

We partially agree. We agree to reword paragraph (q)(1) of this AD because consistent language makes the AD easier to read, and replacement of a panel will terminate the inspections only for the panel that is replaced. We disagree to add references to inspections in paragraph (n) of this AD, as Boeing proposed. Paragraph (q)(1) of this AD terminates the actions required by paragraph (p) of this AD, and doing the actions required by paragraph (p) of this AD terminates the inspections required by paragraph (n) of this AD.

Request To Revise Paragraph (q)(2) of the Proposed AD (79 FR 42710, July 23, 2014)

Boeing requested that we clarify paragraph (q)(2) of the proposed AD (79 FR 42710, July 23, 2014), by revising the wording to show that the optional window belt skin panel replacement terminates the lap joint lower row inspections of AD 2013–09–01, Amendment 39–17442 (78 FR 27001, May 9, 2013), rather than terminating the lap joint modification. Boeing pointed out that paragraph (q)(2) of the proposed AD addresses an optional window belt skin panel replacement. Boeing also indicated that the skin panel replacement was included in Boeing Service Bulletin SB 737–53A1177, Revision 7, dated June 14, 2013, to provide an option for operators to terminate the lap joint lower row inspections, and was mandated by paragraphs (g) and (i) of AD 2013–09–01, in lieu of the lap joint modification which is addressed by paragraph (g) of the proposed AD.

We agree with the request for the reasons provided by the commenter.

There is a direct AMOC connection between the window belt skin panel replacement and the inspections required by paragraphs (g) and (i) of this AD. However, we have added new paragraph (q)(3) of this AD to explain that the skin panel replacement terminates the specified inspections required by paragraphs (g) and (i) of AD 2013–09–01, Amendment 39–17442 (78 FR 27001, May 9, 2013), for the replaced skin panel only.

Request To Change FAA Contact Information

Boeing requested that we clarify paragraphs (t)(1) and (t)(2) of the proposed AD (79 FR 42710, July 23, 2014), by revising the wording to reference the Manager of the Los Angeles ACO instead of the Manager of the Seattle ACO. Boeing indicated that responsibility for the 737 Classic models (which include the airplanes affected by this AD) has been transferred from the Seattle ACO to the Los Angeles ACO and that authority for approval of AMOCs for the proposed AD should be changed from the Manager, Seattle ACO, to the Manager, Los Angeles ACO.

We infer that Boeing requested that we clarify paragraphs (t)(1) and (t)(3) of the proposed AD (79 FR 42710, July 23, 2014).

We agree with the request, and have revised paragraphs (t)(1) and (t)(3) of this AD as requested, and included the following in paragraph (t)(1) of this AD: *9-ANM-LAACO-AMOC-Requests@faa.gov*. We also revised paragraph (u) of this AD to include the appropriate contact information.

Additional Changes to This Final Rule

We have included a new paragraph (s) in this AD to provide credit for accomplishing lap joint repair before the effective date of this AD using Boeing Service Bulletin 737–53A1177, Revision 4, dated September 2, 1999; Boeing Service Bulletin 737–53A1177, Revision 5, dated February 15, 2001; or Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001. The subsequent

paragraphs have been redesignated accordingly.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 42710, July 23, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 42710, July 23, 2014).

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

Related Service Information Under 1 CFR Part 51

Boeing has issued Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013. The service information procedures for repetitive inspections for cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage; repair of any cracking found; modification of the fuselage lap joints at certain locations to terminate the repetitive inspections of the modified areas; replacement of a certain preventive modification with an improved modification; repetitive inspections for cracking at certain window corner fastener holes; a preventive modification; and repair. 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 of this AD.

Costs of Compliance

We estimate that this AD affects 247 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained lap joint modification.	4,650 work-hours × \$85 per hour = \$395,250.	Up to \$204,000	\$599,250	\$95,280,750 (estimated 159 airplanes).
Retained lap joint inspection.	90 work-hours × \$85 per hour = \$7,650 per inspection cycle.	\$0	\$7,650 per inspection cycle.	\$1,889,550 per inspection cycle.
Retained post-NACA inspection.	110 work-hours × \$85 per hour = \$9,350 per inspection cycle.	\$0	\$9,350 per inspection cycle.	\$308,550 per inspection cycle (estimated 33 airplanes).

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained window corner inspection.	36 work-hours × \$85 per hour = \$3,060 per inspection cycle.	\$0	\$3,060 per inspection cycle.	\$755,820 per inspection cycle.
New window corner inspection.	108 work-hours × \$85 per hour = \$9,180 per inspection cycle.	\$0	\$9,180 per inspection cycle.	\$2,267,460 per inspection cycle.

ESTIMATED COSTS: OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
New preventive modification	134 work-hours × \$85 per hour = \$11,390	\$0	\$11,390

We estimate the following costs to do any necessary corrective actions that will be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these corrective actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Window corner repair, per corner	9 work-hours × \$85 per hour = \$765	(¹)	\$765

¹Parts fabricated by operator; cost unknown.

The cost estimate figures discussed above are based on assumptions that no operator has yet accomplished any of the actions required by this AD, and that no operator will accomplish those actions in the future if this AD is not adopted. However, we have been advised that the lap joint modification has already been installed on some affected airplanes. Therefore, based on the current number of U.S.-registered airplanes below the threshold of 50,000 total flight cycles, the future economic cost impact of this AD on U.S. operators is expected to be less than the cost impact figure indicated above.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), and adding the following new AD:

2015–21–06 The Boeing Company:

Amendment 39–18298; Docket No. FAA–2014–0454; Directorate Identifier 2013–NM–138–AD.

(a) Effective Date

This AD is effective December 17, 2015.

(b) Affected ADs

This AD replaces AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002). Certain provisions of this AD affect certain requirements of AD 2013–09–01, Amendment 39–17442 (78 FR 27001, May 9, 2013).

(c) Applicability

This AD applies to The Boeing Company Model 737–200, –200C, –300, –400, and –500 series airplanes, certificated in any category, line numbers 292 through 2565 inclusive.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that certain fuselage lap joints are subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct fatigue cracking of the fuselage lap joints, which could result in reduced structural integrity and sudden decompression of the airplane.

(f) Compliance

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

(g) Retained Lap Joint Modification (Repair)—Crown Areas

This paragraph restates the actions required by paragraph (g) of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), with revised service information. Except as provided by paragraphs (h) and (q)(2) of this AD: Install the lap joint repair as specified in Part 1.E.1. (“Compliance”) of Boeing Service Bulletin 737–53A1177, Revision 4, dated September 2, 1999; Boeing Service Bulletin 737–53A1177, Revision 5, dated February 15, 2001; or Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; per PART III or IV (“Lap Joint Repair”), as applicable; or Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013; per PART III, IV, VI, or VII (“Lap Joint Modification (Repair)”), as applicable, of the Accomplishment Instructions of the applicable service bulletin; at the time specified in paragraph (g)(1), (g)(2), (g)(3), (g)(4), or (g)(5) of this AD, as applicable. Accomplishment of this repair terminates the repetitive inspections required by paragraph (j) of this AD. As of the effective date of this AD, only Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, may be used to do the actions required by this paragraph. A lap splice modification (repair) done in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, terminates the inspections required by paragraphs (g) and (i) of AD 2013–09–01, Amendment 39–17442 (78 FR 27001, May 9, 2013), for the modified (repaired) area only.

(1) For airplanes that have accumulated 70,000 total flight cycles or more as of May 17, 2002 (the effective date of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002)): Within 600 flight cycles after May 17, 2002, do the lap joint repair.

(2) For airplanes that have accumulated 65,000 total flight cycles or more, but fewer than 70,000 total flight cycles as of May 17, 2002 (the effective date of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002)): Do the repair at the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Before the accumulation of 70,000 total flight cycles.

(ii) Within 600 flight cycles after May 17, 2002 (the effective date of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002)).

(3) For airplanes that have accumulated 45,000 total flight cycles or more, but fewer than 65,000 total flight cycles as of May 17, 2002 (the effective date of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002)): Within 5,000 flight cycles after May 17, 2002.

(4) For airplanes that have accumulated less than 45,000 total flight cycles as of May 17, 2002 (the effective date of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002)): Before the accumulation of 50,000 total flight cycles.

(5) Notwithstanding the times specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, for airplanes on which the “Preventive Change” (NACA modification) has been accomplished per PART III of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1177, Revision 1, dated September 19, 1996; Revision 2, dated July 24, 1997; or Revision 3, dated September 18, 1997: Within 18,000 flight cycles after accomplishment of the NACA modification.

(h) Retained Lap Joint Modification for Certain Airplanes

This paragraph restates the requirements of paragraph (h) of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), with revised service information and revised airplane groups.

(1) For airplanes identified as Groups 3 and 5 in Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001: Install the lap joint repair at stringers 4R and 10R, as specified in Part 1.E.1. (“Compliance”) of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, at the time specified in paragraph (g)(1), (g)(2), (g)(3), (g)(4), or (g)(5) of this AD, as applicable, using a method approved in accordance with the procedures specified in paragraph (t) of this AD.

(2) For airplanes identified in Groups 6, 7, and 8 in Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013: Install the lap joint repair at stringers 4R and 10R, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, at the time specified in paragraph (g)(1), (g)(2), (g)(3), (g)(4), or (g)(5) of this AD, as applicable, unless previously accomplished as specified in paragraph (h)(1) of this AD.

(i) Retained Repetitive Low Frequency Eddy Current (LFEC) Inspections—Outside Crown Areas

This paragraph restates the actions required by paragraph (i) of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), with revised service information. Before the accumulation of 70,000 total flight cycles, or within 2,500 flight cycles after May 17, 2002 (the effective date of AD 2002–07–08), whichever comes later: Do an LFEC inspection to find cracking of the lap joints of the fuselage, as specified in Part 1.E.2. (“Compliance”) of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; or Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013; and as identified in Figures 2 through 6 of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6,

dated May 31, 2001; or as identified in Figures 50 through 64 of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013. Do the inspection per Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; or Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013. As of the effective date of this AD, only Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, may be used to do the actions required by this paragraph. Repeat the inspection after that at intervals not to exceed 5,000 flight cycles.

(j) Retained Post-NACA Modification Inspections—Crown Areas

This paragraph restates the actions required by paragraph (j) of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), with revised service information. For airplanes that have the “Preventive Change” (NACA modification) of the crown lap joint stringers (“Crown Laps”) done per PART III of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1177, Revision 1, dated September 19, 1996; Boeing Service Bulletin 737–53A1177, Revision 2, dated July 24, 1997; or Boeing Service Bulletin 737–53A1177, Revision 3, dated September 18, 1997: Within 12,000 flight cycles after accomplishment of the NACA modification, or within 750 flight cycles after May 17, 2002 (the effective date of AD 2002–07–08), whichever is later, do either an external or internal LFEC inspection to find cracking and corrosion as specified in Part 1.E.4.a. (“Compliance”) of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; or Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013; per PART I (“Inspection”) of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; or Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013. The external and internal LFEC inspections are specified in Figures 8 and 9, respectively, of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; and Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013. As of the effective date of this AD, only Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, may be used to do the actions required by this paragraph.

(1) If the external inspection is done: Repeat the inspection after that at intervals not to exceed 1,500 flight cycles until accomplishment of the lap joint repair required by paragraph (g) of this AD.

(2) If the internal inspection is done: Repeat the inspection after that at intervals not to exceed 4,500 flight cycles until accomplishment of the lap joint repair required by paragraph (g) of this AD.

(k) Retained Post-NACA Modification Inspections—Outside Crown Areas

This paragraph restates the actions required by paragraph (k) of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), with revised service information. For airplanes that have the “Preventive

Change” (NACA modification) outside the crown areas done per PART III of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1177, Revision 1, dated September 19, 1996; Boeing Service Bulletin 737–53A1177, Revision 2, dated July 24, 1997; or Boeing Service Bulletin 737–53A1177, Revision 3, dated September 18, 1997: Before the accumulation of 20,000 flight cycles after accomplishment of the NACA modification, or within 750 flight cycles after May 17, 2002 (the effective date of AD 2002–07–08), whichever is later, do either an external or internal LFEC inspection to find cracking and corrosion as specified in Part 1.E.4.b. (“Compliance”) of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; or Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013; per PART I (“Inspection”) of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; or Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013. The external and internal LFEC inspections are specified in Figures 8 and 9, respectively, of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; and Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013. As of the effective date of this AD, only Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, may be used to do the actions required by this paragraph.

(1) If the external inspection is done: Repeat the external inspection after that at intervals not to exceed 1,500 flight cycles.

(2) If the internal inspection is done: Repeat the internal inspection after that at intervals not to exceed 4,500 flight cycles.

(l) Retained Modification of Tear Strap Splice Straps

This paragraph restates the actions required by paragraph (l) of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), with revised service information. For airplanes that have the “lap joint repair,” as specified in Part IV of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1177, Revision 2, dated July 24, 1997; or Revision 3, dated September 18, 1997: Within 45,000 flight cycles after accomplishment of this lap joint repair, modify the splice straps per Figures 10, 11, and 12 of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; or Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013. As of the effective date of this AD, only Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, may be used to do the actions required by this paragraph.

(m) Retained Follow-On LFEC Inspections

This paragraph restates the actions required by paragraph (m) of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), with revised service information. Within 45,000 flight cycles after accomplishment of the lap joint repair required by paragraph (g) or (h) of this AD, as applicable: Do either an external or internal LFEC inspection as specified in Part

1.E.7. (“Compliance”) of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; or Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013; to find cracking of the lap joint repair, per PART I (“Inspection”) of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; or Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013. Repair any crack found before further flight using a method approved in accordance with the procedures specified in paragraph (t) of this AD. The internal LFEC inspection is specified in Figure 9 of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; and Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013. As of the effective date of this AD, only Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, may be used to do the actions required by this paragraph. Repeat the inspection after that at intervals not to exceed 2,800 flight cycles.

(n) Retained Repetitive High Frequency Eddy Current (HFEC) Inspections—Window Corners

This paragraph restates the actions required by paragraph (n) of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), with revised service information. For airplanes having line numbers 520 through 2565 inclusive: Before the accumulation of 50,000 total flight cycles, or within 2,250 flight cycles after May 17, 2002 (the effective date of AD 2002–07–08), whichever comes later, do an HFEC inspection to find cracking as specified in Part 1.E.10 (“Compliance”) of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; or Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013; per PART V (“Window Corner Fastener Hole Cracking, Inspection and Repair”) of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; or Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013. Repeat the inspection after that at intervals not to exceed 4,500 flight cycles, until the initial actions required by paragraph (p) of this AD have been done. Accomplishment of the modification (which includes removing and discarding fasteners, oversizing fastener holes, and installing rivets or Hi-Lok fasteners, as applicable), per PART V of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 5, dated February 15, 2001; or Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; or Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013; constitutes terminating action for the inspections required by this paragraph.

(o) Retained Crack Repair

This paragraph restates the actions required by paragraph (d) of AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), with revised service information. If any crack is found during any inspection required by paragraph (i), (j), or (k) of this AD: Before further flight, repair per PART II

(“Crack Repair”) of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; or Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013; except as required by paragraph (r)(2) of this AD. As of the effective date of this AD, only Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, may be used to do the actions required by this paragraph.

(p) New Inspections, Repair, and Preventive Modification

For airplanes identified as Groups 2 through 28 in Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013: At the applicable times specified in tables 8, 9, 10, and 11 of paragraph 1.E.10, “Compliance,” of Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, except as required by paragraph (r)(1) of this AD, do a surface HFEC inspection for cracking at the applicable window corner fastener holes, and do a preventive modification, as applicable, in accordance with Part V of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, except as required by paragraph (r)(2) of this AD. Repair any crack found before further flight, in accordance with Part V of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, except as required by paragraph (r)(2) of this AD. Repeat the applicable inspection thereafter at the applicable times specified in tables 8, 9, 10, and 11 of paragraph 1.E.10, “Compliance,” of Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013. Accomplishment of the initial inspection specified in this paragraph terminates the repetitive inspection requirements of paragraph (n) of this AD. Accomplishment of the preventive modification specified in this paragraph terminates the repetitive inspection requirements of this paragraph for the applicable corner fastener locations specified in Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013.

(q) Optional Terminating Action

(1) Replacement of the skin panel as specified in Part VIII or Part IX, as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, terminates the repetitive inspections at the window corners specified in paragraph (p) of this AD for the windows common to the replaced panel only.

(2) Replacement of the skin panel as specified in Part VIII or Part IX, as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, terminates the lap joint modification required by paragraph (g) of this AD for the S–10 and S–14 lap joints common to the replaced panel only.

(3) Replacement of the skin panels as specified in Part VIII or Part IX, as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, terminates the inspections required by paragraphs (g)

and (i) of AD 2013–09–01, Amendment 39–17442 (78 FR 27001, May 9, 2013), for the replaced skin panel only.

(r) Exceptions to Service Information Specifications

(1) Where Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013, specifies a compliance time “after the Revision 7 date of this service bulletin,” this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; and Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013; specify to contact Boeing for certain procedures: Do the specified actions before further flight using a method approved in accordance with the procedures specified in paragraph (t) of this AD.

(3) Where Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; and Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013; include the phrase “or is Boeing or FAA approved,” this AD requires the “Boeing Approval” to be requested in accordance with the procedures specified in paragraph (t) of this AD.

(s) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraphs (s)(1)(i), (s)(1)(ii), and (s)(1)(iii) of this AD, which were incorporated by reference in AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002).

(i) Boeing Service Bulletin 737–53A1177, Revision 4, dated September 2, 1999.

(ii) Boeing Service Bulletin 737–53A1177, Revision 5, dated February 15, 2001, which continues to be incorporated by reference in this AD.

(iii) Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, which continues to be incorporated by reference in this AD.

(2) This paragraph provides credit for the actions required by paragraphs (i) through (o) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, which was incorporated by reference in AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002) and continues to be incorporated by reference in this AD.

(t) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2002–07–08, Amendment 39–12702 (67 FR 17917, April 12, 2002), are approved as AMOCs for the corresponding provisions of this AD.

(u) Related Information

(1) For more information about this AD, contact Jennifer Tsakoumakis, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5264; fax: 562–627–5210; email: Jennifer.Tsakoumakis@faa.gov.

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

(v) Material Incorporated by Reference

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

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

(i) Boeing Service Bulletin 737–53A1177, Revision 7, dated June 14, 2013.

(ii) Reserved.

(3) The following service information was approved for IBR on May 17, 2002 (67 FR 17917, April 12, 2002).

(i) Boeing Service Bulletin 737–53A1177, Revision 5, dated February 15, 2001.

(ii) Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001.

(4) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet <https://www.myboeingfleet.com>.

(5) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(6) 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 Renton, Washington, on October 11, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–26616 Filed 11–10–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2461; Directorate Identifier 2013–NM–202–AD; Amendment 39–18310; AD 2015–22–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2009–18–15, for all Airbus Model A300, A310, and A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). AD 2009–18–15 required revising the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness (ICA) to require additional life limits and/or replacements for certain main landing gear and nose landing gear components. This new AD requires revising the maintenance or inspection program to incorporate new maintenance requirements and airworthiness limitations. This AD was prompted by a determination that existing maintenance requirements and airworthiness limitations are inadequate to ensure the structural integrity of the airplane. We are issuing this AD to prevent failure of certain system components, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective December 17, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 17, 2015.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of October 27, 2009 (74 FR 48143, September 22, 2009).

ADDRESSES: You may examine the AD docket on the Internet at <http://>

www.regulations.gov/#!docketDetail;D=FAA-2015-2461; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-2461.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-2125; fax 425-227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2009-18-15, Amendment 39-16011 (74 FR 48143, September 22, 2009). AD 2009-18-15 applied to all Airbus Model A300, A310, and A300 B4-600, B4-600R, and F4-600R series airplanes; and Model A300 C4-605R Variant F airplanes (collectively called Model A300-600 series airplanes). The NPRM published in the **Federal Register** on July 14, 2015 (80 FR 40942).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2013-0248, dated October 14, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Model A300, A310, and A300-600 series airplanes. The MCAI states:

The airworthiness limitations for Airbus aeroplanes are currently published in Airworthiness Limitations Section (ALS) documents.

The mandatory instructions and airworthiness limitations applicable to the Aging Systems Maintenance (ASM) are specified in Airbus A310 or A300-600 ALS Part 4 documents, which are approved by the

European Aviation Safety Agency (EASA). EASA AD 2007-0092 [http://ad.easa.europa.eu/blob/easa_ad_2007_0092.pdf/AD_2007-0092] [which corresponds to FAA AD 2009-06-06, Amendment 39-15842 (74 FR 12228, March 24, 2009)] was issued to require compliance to the requirements as specified in these documents.

The revision 02 of Airbus A310 and Airbus A300-600 ALS Part 4 documents introduces more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with the instructions of ALS Part 4 could result in an unsafe condition [reduced structural integrity of the airplane.]

For the reasons described above, this new [EASA] AD retains the requirements of EASA AD 2007-0092, which is superseded, and requires the implementation of the new or more restrictive maintenance requirements and/or airworthiness limitations as specified in Airbus A310 ALS Part 4, Revision 02, or Airbus A300-600 ALS Part 4, Revision 02, as applicable to aeroplane type/model.

You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov/#!documentDetail;D=FAA-2015-2461-0002>.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 40942, July 14, 2015) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (80 FR 40942, July 14, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 40942, July 14, 2015).

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information. “Sub-part 1-2: Life Limits” and “Sub-part 1-3: Demonstrated fatigue lives” of Part 1, “Safe Life Airworthiness Limitation Items,” in each of these documents describe procedures for revising the maintenance or inspection program to incorporate new maintenance requirements and airworthiness limitations.

- For Model A300 series airplanes: Part 1, “Safe Life Airworthiness Limitation Items,” Revision 01, dated September 5, 2013, of the Airbus Model A300 Airworthiness Limitations Section.

- For Model A300 B4-600, B4-600R, and F4-600R series airplanes, and Model A300 C4-605R Variant F airplanes (collectively called Model A300-600 series airplanes): Part 1, “Safe Life Airworthiness Limitation Items,” Revision 01, dated September 5, 2013, of the Airbus Model A300-600 Airworthiness Limitations Section.

- For Model A310 series airplanes: Part 1, “Safe Life Airworthiness Limitation Items,” Revision 01, dated September 5, 2013, of the Airbus Model A310 Airworthiness Limitations Section.

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 of this AD.

Costs of Compliance

We estimate that this AD affects 177 airplanes of U.S. registry.

The retained ALS revision required by AD 2009-18-15, Amendment 39-16011 (74 FR 48143, September 22, 2009), takes about 1 work-hour per product, at an average labor rate of \$85 per work-hour. Based on these figures, the estimated cost of the actions that were required by AD 2009-18-15 is \$85 per product.

We also estimate that it takes about 1 work-hour per product to comply with the new ALS revision of this AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be \$15,045, or \$85 per product.

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 above, I certify that this AD:

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

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov/#!docketDetail;D=FAA-2015-2461>; 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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the ADDRESSES section.

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 removing Airworthiness Directive AD 2009-18-15, Amendment 39-16011 (74 FR 48143, September 22, 2009), and adding the following new AD:

2015-22-05 Airbus: Amendment 39-18310. Docket No. FAA-2015-2461; Directorate Identifier 2013-NM-202-AD.

(a) Effective Date

This AD becomes effective December 17, 2015.

(b) Affected ADs

(1) This AD replaces AD 2009-18-15, Amendment 39-16011 (74 FR 48143, September 22, 2009).

(2) Accomplishing certain requirements of paragraph (g) of this AD satisfies the requirements of paragraph A. of AD 84-02-04, Amendment 39-4795 (49 FR 2746, January 23, 1984).

(c) Applicability

This AD applies to Airbus Model A300 B2-1A, B2-1C, B2K-3C, B2-203, B4-2C, B4-103, and B4-203 airplanes; Model A300 B4-601, B4-603, B4-620, and B4-622 airplanes; Model A300 B4-605R and B4-622R airplanes; Model A300 F4-605R and F4-622R, and A300 C4-605R Variant F airplanes; and Model A310-203, -204, -221, -222, -304, -322, -324, and -325 airplanes; certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America 32, Landing Gear.

(e) Reason

This AD was prompted by a determination that existing maintenance requirements and airworthiness limitations are inadequate to ensure the structural integrity of the airplane. We are issuing this AD to prevent failure of certain system components, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of Airworthiness Limitation Section (ALS)

This paragraph restates the requirements of paragraph (h) of AD 2009-18-15, Amendment 39-16011 (74 FR 48143, September 22, 2009). For Model A300, A310, and A300-600 series airplanes: Within 3 months after October 27, 2009 (the effective date of AD 2009-18-15), revise the ALS of the instructions for continued airworthiness (ICA) to incorporate the applicable document listed in paragraph (g)(1), (g)(2), or (g)(3) of this AD. Accomplishing the actions specified in the applicable document satisfies the requirements of paragraph A. of AD 84-02-04, Amendment 39-4795 (49 FR 2746, January 23, 1984).

(1) For Model A300 series airplanes: Incorporate the applicable document listed in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(i) Section 05-10-00, Revision 28, dated February 27, 1998, of Chapter 05, “Service Life Limits and Maintenance Checks,” of the Airbus A300 Aircraft Maintenance Manual, except that the parts listed in table 1 to paragraph (g) of this AD are subject to the life limits defined in the document listed in paragraph (g)(1)(ii) of this AD.

(ii) “Sub-part 1-2: Life Limits,” and “Sub-part 1-3: Demonstrated Fatigue Lives” of Part 1, “Safe Life Airworthiness Limitation

Items,” dated September 6, 2007, of the Airbus A300 ALS.

TABLE 1 TO PARAGRAPH (g) OF THIS AD—PARTS SUBJECT TO THE LIFE LIMITS SPECIFIED IN THE DOCUMENT IDENTIFIED IN PARAGRAPH (g)(1)(ii) OF THIS AD

Part No. (P/N)	Part name
P/N C61643-2, P/N C61643-4, P/N C61643-5.	Main landing gear (MLG) shock absorber end fitting.
P/N A32210001205xx	Nose landing gear (NLG) pintle pin.
P/N C62037-1	NLG shock absorber bottom.
P/N 196-0328-501 ...	Cross beam (Pratt & Whitney forward engine mount).

(2) For Model A310 series airplanes: Incorporate “Sub-part 1-2: Life Limits,” and “Sub-part 1-3: Demonstrated Fatigue Lives” of Part 1, “Safe Life Airworthiness Limitation Items,” dated December 21, 2006, of the Airbus A310 ALS.

(3) For Model A300 B4-600, B4-600R, and F4-600R series airplanes, and Model A300 C4-605R Variant F airplanes (collectively called Model A300-600 series airplanes): Incorporate “Sub-part 1-2: Life Limits,” and “Sub-part 1-3: Demonstrated Fatigue Lives” of Part 1, “Safe Life Airworthiness Limitation Items,” dated December 21, 2006, of the Airbus A300-600 ALS.

(h) Retained Initial Compliance Times and Repetitive Inspections

This paragraph restates the requirements of paragraph (i) of AD 2009-18-15, Amendment 39-16011 (74 FR 48143, September 22, 2009). Do the replacement at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, except as provided by paragraph (i) of this AD. The replacement must be done thereafter within the interval specified in the applicable document identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(1) For any life limitation/task that has been complied with before October 27, 2009 (the effective date of AD 2009-18-15, Amendment 39-16011), in accordance with the applicable document listed in paragraph (g)(1), (g)(2), or (g)(3) of this AD, or in accordance with paragraph (g) of AD 2009-18-15, use the last accomplishment of each limitation/task as a starting point for accomplishing each corresponding limitation/task required by this AD.

(2) For any life limitation/task that has not been complied with before October 27, 2009 (the effective date of AD 2009-18-15, Amendment 39-16011), in accordance with the applicable document listed in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, or in accordance with paragraph (g) of AD 2009-18-15, the initial compliance time starts from the date of initial entry into service as defined in the applicable document.

(i) Retained Special Compliance Times

This paragraph restates the requirements of paragraph (j) of AD 2009-18-15, Amendment

39–16011 (74 FR 48143, September 22, 2009). For any airplane on which the history of accumulated landings is partial or unknown, or where the history of application details (airplane type, model, weight variant, etc.) is partial or unknown: Parts listed in figure 1 to paragraph (i) of this AD must be replaced at the associated compliance time. The

replacement must be done thereafter at the interval specified in the applicable document(s) specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

Note 1 to paragraph (i) of this AD: Airbus Service Information Letter 32–118, Revision 02, dated October 24, 2007, provides

operators with guidance on the means to assign a conservative calculated life to parts whose history of accumulated landings is partial or unknown; and to select the limitations applicable to parts whose history of application details (aircraft type, aircraft model, weight variant, etc.) is partial or unknown.

FIGURE 1 TO PARAGRAPH (i) OF THIS AD—SPECIAL COMPLIANCE TIMES

Designation	Aircraft type applicability				Start date	Compliance time (whichever occurs first after the "start date")		
	A300	A310	A300–600	P/N		Landings	Calendar time	
	X	X	X					
MAIN LANDING GEAR								
Aft pintle pin	A32140032200xx	X			December 13, 2007	13,500	9 years.	
	A32140056200xx	X			December 13, 2007	13,500	9 years.	
	A32140056202xx	X			December 13, 2007	13,500	9 years.	
	A32140057200xx	X			December 13, 2007	13,500	9 years.	
	A32140057202xx	X		X	December 13, 2007	13,500	9 years.	
	A32140062000xx	X			December 13, 2007	13,500	9 years.	
	A32140063000xx	X		X	December 13, 2007	13,500	9 years.	
	Half ball housing (Fwd pintle bearing).	A32140036200xx	X			December 13, 2007	13,500	9 years.
		A32140036202xx	X			December 13, 2007	13,500	9 years.
		A32140036204xx	X			December 13, 2007	13,500	9 years.
		A32140036206xx	X			December 13, 2007	13,500	9 years.
		A32140042200xx	X		X	December 13, 2007	13,500	9 years.
		A32140042202xx	X		X	December 13, 2007	13,500	9 years.
A32140068002xx		X			December 13, 2007	13,500	9 years.	
A32140068004xx		X			December 13, 2007	13,500	9 years.	
Ball (Fwd pintle pin)	A32140069002xx	X		X	December 13, 2007	13,500	9 years.	
	A32140069004xx	X		X	December 13, 2007	13,500	9 years.	
	A32140012202xx	X			December 13, 2007	13,500	9 years.	
	A32140043202xx	X		X	December 13, 2007	13,500	9 years.	
	A32140043204xx	X		X	December 13, 2007	13,500	9 years.	
Pin (Multiple link/Frame 50).	A53833451200xx	X			December 13, 2007	13,500	9 years.	
	A53833451206xx	X			December 13, 2007	13,500	9 years.	
	A53834451200xx	X			December 13, 2007	13,500	9 years.	
	A53834451202xx	X		X	April 25, 2007	13,500	9 years.	
Pin (Drop link/Frame 50).	A5381122200xx		X		April 25, 2007	18,000	9 years.	
MLG Barrel Assembly								
Upper torque link pin nut.	00–200–402	X			December 13, 2007	N/A	30 months.	
	SL40089	X			December 13, 2007	N/A	30 months.	
	SL40089P	X			December 13, 2007	N/A	30 months.	
	SL40123	X			December 13, 2007	N/A	30 months.	
	SL40123P	X		X	April 25, 2007	N/A	30 months.	
Torque link medium pin nut.	00–200–358	X			December 13, 2007	N/A	30 months.	
	SL40114P	X		X	April 25, 2007	N/A	30 months.	
	SL40132	X			December 13, 2007	N/A	30 months.	
	SL40132P	X		X	April 25, 2007	N/A	30 months.	
Attaching fitting pin	C62311–1	X			December 13, 2007	13,500	9 years.	
	C62311–20	X		X	April 25, 2007	13,500	9 years.	
Pin (Connecting rod/ Upper rod).	C65815	X			December 13, 2007	13,500	9 years.	
	C65815–1	X			December 13, 2007	13,500	9 years.	
	C65815–20	X			December 13, 2007	13,500	9 years.	
	C66472	X			December 13, 2007	13,500	9 years.	
	C66472–1	X			December 13, 2007	13,500	9 years.	
	C66472–20	X		X	April 25, 2007	13,500	9 years.	
	D52751		X		April 25, 2007	18,000	9 years.	
MLG Shock Absorber Assembly								
Lower torque link pin nut.	00–200–402	X			December 13, 2007	N/A	30 months.	
	SL40089	X			December 13, 2007	N/A	30 months.	
	SL40089P	X			December 13, 2007	N/A	30 months.	
	SL40123	X			December 13, 2007	N/A	30 months.	
	SL40123P	X		X	April 25, 2007	N/A	30 months.	

FIGURE 1 TO PARAGRAPH (i) OF THIS AD—SPECIAL COMPLIANCE TIMES—Continued

Designation	Aircraft type applicability				Start date	Compliance time (whichever occurs first after the "start date")	
	A300	A310	A300-600	P/N		Landings	Calendar time
	X	X	X				
Bogie beam pivot pin nut.	SL40054	X	.....	.....	December 13, 2007	at next removal/ installation. ^{1 2}	
	SL40054P	X	.....	X	April 25, 2007	at next removal/ installation. ^{1 2}	
	SL40413P .....	.....	X	.....	April 25, 2007	at next removal/ installation. ^{1 2}	
MLG Lock Link Assembly							
Lock link medium pin ...	C61485-1	X	.....	.....	December 13, 2007	N/A	30 months.
	C61485-20	X	.....	X	April 25, 2007	N/A	30 months.
NOSE LANDING GEAR							
Pintle pin	A32210079200xx	X	X	X	April 25, 2007	13,500	9 years.
NLG Telescopic Strut Assembly							
Nut (Cylinder/Locking cylinder).	C61375	X	X	.....	April 25, 2007	13,500	9 years.
	D55955	X	X	X	April 25, 2007	13,500	9 years.
Locking sleeve	C61389	X	X	.....	December 13, 2007	13,200	9 years.
	C61389-1	X	X	X	April 25, 2007	13,500	9 years.
NLG Barrel Assembly							
Pin (Clevis/Telescopic strut).	C62231-1	X	.....	.....	December 13, 2007	13,200	9 years.
	C62231-2	X	.....	.....	December 13, 2007	13,200	9 years.
	C62231-20	X	X	X	April 25, 2007	13,500	9 years.
	D56530	X	X	X	April 25, 2007	13,500	9 years.
Lower pin (Link/Clevis)	C62268-1	X	.....	.....	December 13, 2007	13,200	9 years.
	C62268-2	X	.....	.....	December 13, 2007	13,200	9 years.
	C62268-20	X	X	X	April 25, 2007	13,500	9 years.
Link (Clevis/Barrel)	C62230-1	X	X	X	April 25, 2007	13,500	9 years.
	D56526	X	X	X	April 25, 2007	13,500	9 years.
Upper pin (Link/Barrel)	C62267-1	X	.....	.....	December 13, 2007	13,200	9 years.
	C62267-2	X	.....	.....	December 13, 2007	13,200	9 years.
	C62267-20	X	X	X	April 25, 2007	13,500	9 years.
End fitting pin nut	D68062	X	X	X	December 13, 2007	at next removal/ installation. ²	
	MS17825-6	X	X	X	December 13, 2007	at next removal/ installation. ²	
End fitting pin	AN6-17	X	X	X	December 13, 2007	at next removal/ installation. ²	
	D61183	X	X	X	December 13, 2007	at next removal/ installation. ²	
	D68063	X	X	X	December 13, 2007	at next removal/ installation. ²	
	NAS1306-22D	X	X	X	December 13, 2007	at next removal/ installation. ²	
End fitting	C62032	X	X	X	April 25, 2007	13,500	9 years.
	C62032-1	X	X	X	April 25, 2007	13,500	9 years.
Rack	C61453	X	.....	.....	December 13, 2007	13,200	9 years.
	C61453-1	X	X	X	April 25, 2007	13,500	9 years.
	C61453-20	X	X	X	April 25, 2007	13,500	9 years.
	C61453-40	X	X	X	April 25, 2007	13,500	9 years.
	C61453-41	X	X	X	April 25, 2007	13,500	9 years.
	C62223-1	X	.....	.....	December 13, 2007	13,200	9 years.
Torque link pin (Upper & Lower).	C62223-20	X	X	X	April 25, 2007	13,500	9 years.

FIGURE 1 TO PARAGRAPH (i) OF THIS AD—SPECIAL COMPLIANCE TIMES—Continued

Designation	Aircraft type applicability				Start date	Compliance time (whichever occurs first after the "start date")	
	A300	A310	A300-600	P/N		Landings	Calendar time
	X	X	X				
Torque link medium pin nut.	SL40110P	X	X	X	April 25, 2007	N/A	30 months.
NLG Shock Absorber Assembly							
Wheel axle nut	C62879	X	X	X	April 25, 2007	4,000	24 months.
Upper cam dowel	C62270	X	X	X	December 13, 2007	at next removal/installation.	
Upper cam	C62034-1	X	X	X	April 25, 2007	13,500	9 years.
Lower cam	C62035	X	X	X	April 25, 2007	13,500	9 years.
Restrictor	C62036	X			December 13, 2007	13,200	9 years.
	C62036-1	X			December 13, 2007	13,200	9 years.
	C62036-2	X			December 13, 2007	13,200	9 years.
	C67863	X			December 13, 2007	13,200	9 years.
	C67863-1	X	X	X	April 25, 2007	13,500	9 years.
	C67863-2	X	X	X	April 25, 2007	13,500	9 years.
	C67863-3	X			December 13, 2007	13,500	9 years.
	C67863-4	X	X	X	April 25, 2007	13,500	9 years.
Lower cam dowel	C62866	X	X	X	December 13, 2007	at next removal/installation. ²	
Nut (S/A/Barrel)	C64040	X			December 13, 2007	at next removal/installation. ^{1 2}	
	C64040-1	X	X	X	December 13, 2007	at next removal/installation. ^{1 2}	

¹ When the nut is temporarily removed and reinstalled for the purpose of performing maintenance outside a workshop, no replacement is required provided the nut's removal and reinstallation are performed on the same assembly and neither the assembly nor the nut accumulates time in service during the period between the removal and reinstallation.

² If the removal/installation was done after the start date, but before the effective date of this AD, the compliance time is within 3 months after October 27, 2009 (the effective date of AD 2009-18-15, Amendment 39-16011 (74 FR 48143, September 22, 2009)).

(j) New Requirements of This AD: Maintenance Program Revision

Within 3 months after the effective date of this AD: Revise the maintenance or inspection program, as applicable, to incorporate the applicable limitation, replacement, or inspection specified in paragraph (j)(1), (j)(2), or (j)(3) of this AD, as applicable. Doing any task required by this paragraph terminates the corresponding task required by paragraph (g), (h), and (i) of this AD.

(1) For Model A300 series airplanes: Incorporate "Sub-part 1-2: Life Limits," and "Sub-part 1-3: Demonstrated Fatigue Lives" of Part 1, "Safe Life Airworthiness Limitation Items," Revision 01, dated September 5, 2013, of the Airbus A300 ALS.

(2) For Model A300 B4-600, B4-600R, and F4-600R series airplanes, and Model A300 C4 605R Variant F airplanes (collectively called Model A300-600 series airplanes): Incorporate "Sub-part 1-2: Life Limits," and "Sub-part 1-3: Demonstrated Fatigue Lives" of Part 1, "Safe Life Airworthiness Limitation Items," Revision 01, dated September 5, 2013, of the Airbus A300-600 ALS.

(3) For Model A310 series airplanes: Incorporate "Sub-part 1-2: Life Limits," and "Sub-part 1-3: Demonstrated Fatigue Lives" of Part 1, "Safe Life Airworthiness Limitation

Items," dated Revision 01, September 5, 2013, of the Airbus A310 ALS.

(k) New Limitation: No Alternative Actions or Intervals

After accomplishment of the revision required by paragraph (j) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356;

telephone 425-227-2125; fax 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013-0248, dated October 14, 2013, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-2461-0002.

(2) Service information identified in this AD that is not incorporated by reference in this AD is available at the addresses specified in paragraphs (n)(5) and (n)(6) of this AD.

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on November 27, 2015.

(i) ALS Part 1, "Safe Life Airworthiness Limitation Items," Revision 01, dated September 5, 2013, of the Airbus Model A300 Airworthiness Limitations Section.

(ii) ALS Part 1, "Safe Life Airworthiness Limitation Items," Revision 01, dated September 5, 2013, of the Airbus Model A300-600 Airworthiness Limitations Section.

(iii) ALS Part 1, "Safe Life Airworthiness Limitation Items," Revision 01, dated September 5, 2013, of the Airbus Model A310 Airworthiness Limitations Section.

(4) The following service information was approved for IBR on October 27, 2009 (74 FR 48143, September 22, 2009).

(i) Section 05-10-00 of Chapter 05, "Service Life Limits and Maintenance Checks," of the Airbus A300 Aircraft Maintenance Manual (AMM), Revision 28, dated February 27, 1998.

(A) The AMM title page; the Record of Revisions, Effective Pages, and Table of Content pages; and Section 05-10-00; for Chapter 05 of Airbus A300 AMM are all dated February 27, 1998.

(B) The revision level of Chapter 05 of the Airbus A300 AMM is indicated only in the Record of Revisions section of Chapter 05.

(C) The List of Effective Pages (LOEP) for Chapter 05 of the Airbus A300 AMM contains the discrepancies identified in paragraphs (n)(4)(i)(C)(1) through (n)(4)(i)(C)(4) of this AD.

(1) The Transmittal Letter page, page 4 of the LOEP and Table of Contents sections, page 2 of Subsection 05-00-01, Subsection 05-10-00, and page 1 of Subsection 05-11-11, are not listed in the LOEP for Chapter 05 of the Airbus A300 AMM.

(2) The LOEP for Chapter 05 of the Airbus A300 AMM does not specify a date for the Record of Revisions page.

(3) The LOEP for Chapter 05 of the Airbus A300 AMM identifies three pages for Subsection 05-11-00, Configuration 5; however, only one page exists.

(4) The LOEP for Chapter 05 of the Airbus A300 AMM identifies three pages for Subsection 05-11-00, Configuration 9; however, those pages do not exist.

(ii) Airbus A300 Airworthiness Limitations Section, ALS Part 1, "Safe Life Airworthiness Limitations Items" dated September 6, 2007.

(iii) Airbus A300-600 Airworthiness Limitations Section, ALS Part 1, "Safe Life Airworthiness Limitations Items" dated December 21, 2006.

(iv) Airbus A310 Airworthiness Limitations Section, ALS Part 1, "Safe Life

Airworthiness Limitation Items" dated December 21, 2006.

(5) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>.

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

(7) 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 Renton, Washington, on October 21, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015-27449 Filed 11-10-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 150911846-5846-01]

RIN 0694-AG74

Addition of Certain Persons and Modification of Certain Entries to the Entity List; and Removal of Certain Persons From the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding seven persons under ten entries to the Entity List. The seven persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These persons will be listed on the Entity List under the destinations of China and Hong Kong.

This final rule also removes two persons from the Entity List. One entity requested removal from the Entity List in accordance with the procedure for requesting removal or modification of an Entity List entry. The End-User Review Committee (ERC) decided to remove this entity following a review of information provided in the removal request. The ERC decided to remove a

second person from the Entity List following a proposal submitted by an ERC member agency, in accordance with the procedure for requesting removal or modification of an Entity List entity.

Finally, this final rule modifies ten existing entries on the Entity List consisting of one entry under China and nine entries under Hong Kong to provide additional or modified addresses and/or aliases for these persons.

DATES: This rule is effective on November 12, 2015.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-5991, Fax: (202) 482-3911, Email: ERC@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

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

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

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add seven persons under ten entries to the Entity List. These seven persons are being added on the basis of

§ 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The ten entries added to the Entity List consist of three entries in China and seven entries in Hong Kong. There are ten entries for the seven persons because three persons are listed in both China and Hong Kong, resulting in three additional entries.

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

The ERC has determined that for the seven persons added, there is reasonable cause to believe, based on specific and articulable facts, that (Jack) Wang Wei, Sky Rise Technology Ltd., TiMi Technologies Co. Ltd., Caprice Group Ltd., Reekay Technology Limited, and 32 Group China Ltd. have made attempts to procure items, including U.S.-origin items, for activities contrary to the national security and foreign policy interests of the United States. Specifically, (Jack) Wang Wei has used these companies to supply U.S.-origin items to an Iranian party associated with the Iranian defense industry and to an Iranian party whose customers include companies designated by the Department of Treasury as Specially Designated Nationals.

Pursuant to § 744.11(b)(2) of the EAR, the ERC determined that the conduct of these seven persons raises sufficient concern that prior review of exports, reexports, or transfers (in-country) of items subject to the EAR involving these persons, and the possible imposition of license conditions or license denials on shipments to the persons, will enhance BIS's ability to prevent violations of the EAR.

For the seven persons this rule adds to the Entity List on the basis of

§ 744.11, the ERC specified a license requirement for all items subject to the EAR and a license review policy of presumption of denial. The license requirements apply to any transaction in which items are to be exported, reexported, or transferred (in-country) to any of the persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule.

This final rule adds the following seven persons under ten entries to the Entity List:

China

(1) *Sky Rise Technology Ltd.*, a.k.a., the following one alias:

—Sky Rise Tech.

4-4-2301 Xinyi Jiayuan, Chongwenmen, Dongcheng, Beijing, China (See also addresses under Hong Kong);

(2) *TiMi Technologies Co., Ltd.*, a.k.a., the following two aliases:

—TiMi Technology Co. Ltd.; and
—TiMi Tech.

F/10, A-Tower, Nongke Building, 11/ Shu Guang Hua Yuan Zhong Lu, Haidian District, Beijing, China, 100097; and Nanshan Avenue, Nanshan District, 518054, Shenzhen, China (See also addresses under Hong Kong); and

(3) *Wang Wei*, a.k.a., the following one alias:

—Jack Wang.

4-4-2301 Xinyi Jiayuan, Chongwenmen, Dongcheng, Beijing, China; and F/10, A-Tower, Nongke Building, 11/Shu Guang Hua Yuan Zhong Lu, Haidian District, Beijing, China, 100097 (See also addresses under Hong Kong).

Hong Kong

(1) *32 Group China Ltd.*, Room 1905, 19/F, Nam Wo Hong Bldg., 148 Wing Lok Street, Sheung Wang, Hong Kong; and Room 1119, 11/F, Block B, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong;

(2) *Caprice Group Ltd.*, Room 1119, 11/F, Block B1, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong; and Unit B1, G/F, Pioneer Building, 213 Wai Yip St., Kwun Tong, Kowloon, Hong Kong; and Unit A, G/F, Pioneer Building, 213 Wai Yip St., Kwun Tong, Kowloon, Hong Kong;

(3) *Kitronix Display*, Unit B1, G/F, Pioneer Building, 213 Wai Yip St., Kwun Tong, Kowloon, Hong Kong;

(4) *Reekay Technology Ltd.*, a.k.a., the following one alias:

—Reekay Technology.

Suite 502, 5th Floor Arion Commercial Centre, No. 2-12 Queens Road West, Sheung Wan, Hong Kong;

(5) *Sky Rise Technology Ltd.*, a.k.a., the following one alias:

—Sky Rise Tech.

Room 1905, 19/F, Nam Wo Hong Bldg., 148 Wing Lok Street, Sheung Wang, Hong Kong; and Room 1118, 11/F, Block B1, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong; and 1119, 11/F, Block B, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong (See also address under China);

(6) *TiMi Technologies Co., Ltd.*, a.k.a., the following two aliases:

—TiMi Technology Co. Ltd.; and
—TiMi Tech.

Room 1119, 11/F, Block B, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong; and Room 1118, 11/F, Block B1, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong; and Unit A, G/F, Pioneer Building, 213 Wai Yip St., Kwun Tong, Kowloon, Hong Kong; and Room 1905, 19/F, Nam Wo Hong Bldg., 148 Wing Lok Street, Sheung Wang, Hong Kong (See also addresses under China);

(7) *Wang Wei*, a.k.a., the following one alias:

—Jack Wang.

Room 1905, 19/F, Nam Wo Hong Bldg., 148 Wing Lok Street, Sheung Wang, Hong Kong; and Room 1118, 11/F, Block B, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong; and Room 1119, 11/F, Block B, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong (See also addresses under China).

Removals From the Entity List

This rule implements a decision of the ERC to remove two persons, Weihai New Era Chemical Industrial Company Limited, located in China; and Able City Development Limited, located in Hong Kong, from the Entity List. This rule removes Weihai New Era Chemical Industrial Company Limited on the basis of a removal request submitted by this listed person pursuant to § 744.16 (Procedure for requesting removal or modification of an Entity List entity) of the EAR. Able City Development Limited is being removed pursuant to a proposal submitted by an End-User

Review Committee (ERC) member agency, in accordance with Supplement No. 5 to Part 744 of the EAR, as discussed below.

A. Removal pursuant to § 744.16.

Based upon a review of the information provided in a removal request made in accordance with § 744.16 of the EAR and further review conducted by the ERC, the ERC determined that the Weihai New Era Chemical Industrial Company Limited should be removed from the Entity List.

Weihai New Era Chemical Industrial Company Limited was added to the Entity List on May 1, 2014 (79 FR 24563) pursuant to § 744.11(b)(2) and (b)(5) of the EAR. The ERC's decision to remove Weihai New Era Chemical Industrial Company Limited from the Entity List was based on information provided by the company in its appeal request pursuant to § 744.16.

In accordance with § 744.16(c), the Deputy Assistant Secretary for Export Administration has sent written notification informing this person of the ERC's decision.

B. Other removal based on ERC decision.

This rule implements a decision of the ERC to remove one person located in Hong Kong, Able City Development Limited, from the Entity List. The ERC determined that this person no longer met the criteria for inclusion on the Entity List. Able City Development Limited was added to the Entity List on July 21, 2009 (74 FR 35797) pursuant to § 744.11(b) of the EAR. In accordance with the procedures outlined in Supplement No. 5 to part 744 of the EAR, any agency that participates in the ERC may make a proposal to add, modify or remove an entry from the Entity List by submitting that proposal to the chairman. For this removal, an ERC member agency proposed to the ERC to remove Able City Development Limited because a review of records indicated that the entity has dissolved. Because this entity does not exist, in accordance with § 744.16(c), the Deputy Assistant Secretary for Export Administration has not sent written notification informing this person of the ERC's decision.

This final rule implements the decision to remove the following two persons from the Entity List:

China

(1) *Weihai New Era Chemical Industrial Company Limited*, No. 985 Fenghua Shan Road, Yangting New Industrial District, Huancui District, Weihai, China.

Hong Kong

(1) *Able City Development Limited*, Unit C, 9/F Neich Tower, 128 Gloucester Road, Wanchai, Hong Kong; and Unit 401, Harbour Ctr., Tower 2, 8 Hok Cheung Street, Hung Hom, Kowloon, Hong Kong.

The removal of the two entities referenced above, which was approved by the ERC, eliminates the existing license requirements in Supplement No. 4 to part 744 for exports, reexports and transfers (in-country) to these entities. However, the removal of these two entities from the Entity List does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR. Neither the removal of an entity from the Entity List nor the removal of Entity List-based license requirements relieves persons of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which provides that, "you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR." Additionally these removals do not relieve persons of their obligation to apply for export, reexport or in-country transfer licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, "BIS's 'Know Your Customer' Guidance and Red Flags," when persons are involved in transactions that are subject to the EAR. Additionally, as noted above, Able City Development Limited no longer exists so there should be no transactions involving this person.

Modifications to the Entity List

This final rule implements decisions of the ERC to modify ten existing entries on the Entity List. Under the destination of China, the ERC made a determination to add six additional addresses and eight additional aliases to the entry for China Electronics Technology Group Corporation 29 (CETC 29) Research Institute. Under the destination of Hong Kong, the ERC made a determination to make the following modifications to nine entries, as follows: add one additional address to the entry for Biznest, LTD; add one additional address to the entry for Giant Base Asia Limited; add one additional address to the entry for Jadeshine Engineering (HK) Co.; add one additional address to the entry for JLD Technology; add one additional address and two additional aliases to the entry for Kinglead Electronics Co., Ltd.; add one alias to the entry for PRC Lode Technology Company; add one additional address to

the entry for Serko Limited; add one additional address and one alias to the entry for Tex-Co Logistics Ltd.; and add one additional address and one alias to the entry for Yeraz, LTD.

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

China

(1) *China Electronics Technology Group Corporation 29 (CETC 29) Research Institute*, a.k.a., the following ten aliases:
 —CETC 29th Research Institute;
 —China Southwest Electronic Equipment Research Institute (SWIEE);
 —29 (SIWEI Co) Institute;
 —SIWI Electronics Corporation;
 —Chengdu SIWI Electronics Inc.;
 —Chengdu SIWEI Electronics Company;
 —Chengdu 29 Institute;
 —Si Wei Company 29th Institute;
 —SIWI Group; and
 —Southwest China Institute of Electronics.
 No. 496 West Yingkang Road, Chengdu, Sichuan Province 610036, China; and Box #429, #1 Waixichadianziheng Street, Chengdu, Sichuan Province 610036, China; and 5 Cheng Wen Road, Chengdu, China 610036; and No. 3 Research Department, Zhongdian, China; and No. 29 Institute, Waixi Chadi, Chengdu, China; and No. 81 BaiChao Road, XiPu Town, PiXian County, Chengdu, China; and Siwei Electron Mansion, Xiejiasi, Qingyang, Chengdu, China; and 1 Hengjie Chadianzi Western Suburb, Chengdu, China.

Hong Kong

(1) *Biznest, LTD*, Room 927 9/F Far East Consortium Building, 121 Des Voeux Road C, Central District, Hong Kong; and 4/F, Hong Kong Trade Centre, 161–167 Des Voeux Road, Central, Hong Kong;

(2) *Giant Base Asia Limited*, Room 2205, 22/F, Kowloon Building, 555 Nathan Road, Hong Kong; and Flat E, Block 1, 12/F, Superluck Industrial Centre, Tsuen Wan, New Territories, Hong Kong;

(3) *Jadeshine Engineering (HK) Co.*, Room 702, Boss Commercial Centre, Ferry Street 38, Kowloon, Hong Kong; and G/F BLK C 255 Sai Tau Wai DD 123 Lot 1307 Yuen Long, NT, Hong Kong;

(4) *JLD Technology*, Hong Kong Co., Ltd., Room 1237, Pacific Trade Centre, No. 2 Kai Hing Road, Kowloon Bay, Hong Kong; and Room 301–2, Hang Seng Wanchai Building, 3rd Floor, No. 200 Hennessy Road, Wanchai, Hong Kong;

(5) *Kinglead Electronics Co., Ltd.*, a.k.a., the following four aliases:

- Kinglead International Trading;
- Kinglead Trading;
- Kinglead International Trading Limited; *and*
- Phonide Electronics Limited.
Room 1041 Pacific Trade Center, No. 2 Kai Hing Road, Kowloon Bay, Hong Kong; *and* B5–3, 29/F, Legend Tower, 7 Shing Yip Street, Kwun Tong, Kowloon, Hong Kong (See alternate address under China);

(6) *PRC Lode Technology Company*, a.k.a., the following one alias:

- Lode International Limited.
Room 1019–1020 Nan Fung Centre, 264–298 Castle Peak Road, Tsuen Wan New Territories, Hong Kong; *and* Room 1522 Nan Fung Centre, 264–298 Castle Peak Road, Tsuen Wan New Territories, Hong Kong (See alternate addresses under China);

(7) *Serko Limited*, Room 704 7/F, Landwide Commercial Building, 118–120 Austin Rd, Tsim Sha Tsui, Hong Kong; *and* Room 1509, Unit A, 15th Floor, Mai Shun Industrial Building, No. 18–24 Kwai Cheong Road, New Territories, Hong Kong;

(8) *Tex-Co Logistics Ltd.*, a.k.a., the following one alias:

- Tex-Co Hongxin Logistics Limited.
GF Seapower Industrial Building 177, Hoi Bun Road, Kowloon, Hong Kong, *and* Room 2202, 22F, Causeway Bay Plaza 1, 489 Hennessey Road, Causeway Bay, Hong Kong, *and* Room B03, 6/F, Cheong Wah Factory Building, 39–41 Sheung Heung Road, Tokwawan, Kowloon, Hong Kong; *and* Room G, 6/F Winner Building, 36 Man Yue Street, Hung Hom, Kowloon; *and*

(9) *Yeraz, LTD*, a.k.a., the following one alias:

- Mikrocitcity HK Limited.
Room 927 9/F Far East Consortium Building, 121 Des Voeux Road C, Central District, Hong Kong; *and* Room 402–403, 4/F, Hong Kong Trade Centre, 161–167 Des Voeux Road, Central, Hong Kong.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on November 12, 2015, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or

export or reexport without a license (NLR).

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Sehra, Office of Management and Budget (OMB), by email to [\[Seehra@omb.eop.gov\]\(mailto:Seehra@omb.eop.gov\), or by fax to \(202\) 395–7285.](mailto:Jasmeet_K_</p>
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3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. For the seven persons under ten entries added to the Entity List in this final rule, and the ten existing entities whose entries on the Entity List are being modified to provide additional or modified addresses and/or aliases, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (See 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in-country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List or modified by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, because these parties may receive notice of the U.S. Government's intention to place this entity on the Entity List if a proposed rule is published, doing so would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, or to take steps to set up additional aliases, change addresses, and other measures to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

For the two removals from the Entity List in this final rule, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), BIS finds good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because it would be contrary to the public interest.

In determining whether to grant removal requests from the Entity List, a committee of U.S. Government agencies (the End-User Review Committee (ERC)) evaluates information about and commitments made by listed persons requesting removal from the Entity List, the nature and terms of which are set

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

The removal from the Entity List as a result of a removal request granted by the ERC or for other reasons involve interagency deliberation and result from review of public and non-public sources, including sensitive law enforcement information and classified information, and the measurement of such information against the Entity List removal criteria. This information is extensively reviewed, including according to the criteria for evaluating removal requests from the Entity List, as set out in 15 CFR part 744, Supplement No. 5 and 15 CFR 744.16(b). For reasons of national security, BIS is not at liberty to provide to the public detailed information on which the ERC relied to make the decisions to remove these two entities. In addition, the information included in the removal request is information exchanged between the applicant and the ERC, which by law (section 12(c) of the Export

Administration Act), BIS is restricted from sharing with the public. Moreover, removal requests from the Entity List contain confidential business information, which is necessary for the extensive review conducted by the U.S. Government in assessing such removal requests.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the **Federal Register**. BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(1) because this rule is a substantive rule which relieves a restriction. This rule's removal of two persons from the Entity List removes a requirement (the Entity-List-based license requirement and limitation on use of license exceptions) on these two persons being removed from the Entity List. The rule does not impose a requirement on any other person for these two removals from the Entity List.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. As a result, no final regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

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

PART 744—[AMENDED]

- 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59

FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 17, 2014, 79 FR 56475 (September 19, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014); Notice of January 21, 2015, 80 FR 3461 (January 22, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of September 18, 2015, 80 FR 57281 (September 22, 2015).

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

- a. By adding under China, in alphabetical order, three Chinese entities;
- b. By revising under China, one Chinese entity, “China Electronics Technology Group Corporation 29 (CETC 29) Research Institute”;
- c. By removing under China, one Chinese entity, “Weihai New Era Chemical Industrial Company Limited, No. 985 Fenghua Shan Road, Yangting New Industrial District, Huancui District, Weihai, China.”;
- d. By adding under Hong Kong, in alphabetical order, seven Hong Kong entities;
- e. By revising under Hong Kong, nine Hong Kong entities, “Biznest, LTD”, “Giant Base Asia Limited”, “Jadeshine Engineering (HK) Co.”, “JLD Technology”, “Kinglead Electronics Co., Ltd.”, “PRC Lode Technology Company”, “Serko Limited”, “Tex-Co Logistics Ltd.”, “Yeraz, LTD”; and
- f. By removing under Hong Kong, one Hong Kong entity, “Able City Development Limited, Unit C, 9/F Neich Tower, 128 Gloucester Road, Wanchai, Hong Kong; and Unit 401, Harbour Ctr., Tower 2, 8 Hok Cheung Street, Hung Hom, Kowloon, Hong Kong.”

The additions and revisions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	Federal Register citation
* China, People's Republic of	* China Electronics Technology Group Corporation 29 (CETC 29) Research Institute, a.k.a., the following ten aliases: —CETC 29th Research Institute; —China Southwest Electronic Equipment Research Institute (SWIEE); —29 (SIWEI Co) Institute; —SIWI Electronics Corporation; —Chengdu SIWI Electronics Inc.; —Chengdu SIWEI Electronics Company; —Chengdu 29 Institute; —Si Wei Company 29th Institute; —SIWI Group; <i>and</i> —Southwest China Institute of Electronics No. 496 West Yingkang Road, Chengdu, Sichuan Province 610036, China; <i>and</i> Box #429, #1 Waixichadianziheng Street, Chengdu, Sichuan Province 610036, China; <i>and</i> 5 Cheng Wen Road, Chengdu, China 610036; <i>and</i> No.3 Research Department, Zhongdian, China; <i>and</i> No. 29 Institute, Waixi Chadi, Chengdu, China; <i>and</i> No.81 BaiChao Road, XiPu Town, PiXian County, Chengdu, China; <i>and</i> Siwei Electron Mansion, Xiejiasi, Qingyang, Chengdu, China; <i>and</i> 1 Hengjie Chadianzi Western Suburb, Chengdu, China.	* For all items subject to the EAR. (See § 744.11 of the EAR).	* Presumption of denial ...	* 79 FR 44680, 8/1/2014. 80 FR [INSERT FR PAGE NUMBER], 11/12/2015.
*	* Sky Rise Technology Ltd., a.k.a., the following one alias: —Sky Rise Tech 4-4-2301 Xinyi Jiayuan, Chongwenmen, Dongcheng, Beijing, China (See also addresses under Hong Kong).	* For all items subject to the EAR. (See § 744.11 of the EAR).	* Presumption of denial ...	* 80 FR [INSERT FR PAGE NUMBER], 11/12/2015.
*	* TiMi Technologies Co., Ltd., a.k.a., the following two aliases: —TiMi Technology Co. Ltd —TiMi Tech F/10, A-Tower, Nongke Building, 11/ Shu Guang Hua Yuan Zhong Lu, Haidian District, Beijing, China, 100097; <i>and</i> Nanhai Avenue, Nanshan District, 518054, Shenzhen, China (See also addresses under Hong Kong)	* For all items subject to the EAR. (See § 744.11 of the EAR).	* Presumption of denial ...	* 80 FR [INSERT FR PAGE NUMBER], 11/12/2015.
*	* Wang Wei, a.k.a., the following one alias: —Jack Wang	* For all items subject to the EAR. (See § 744.11 of the EAR).	* Presumption of denial ...	* 80 FR [INSERT FR PAGE NUMBER], 11/12/2015.

Country	Entity	License requirement	License review policy	Federal Register citation
	4-4-2301 Xinyi Jiayuan, Chongwenmen, Dongcheng, Beijing, China; and F/10, A-Tower, Nongke Building, 11/Shu Guang Hua Yuan Zhong Lu, Haidian District, Beijing, China, 100097 (See also addresses under Hong Kong)			
Hong Kong	32Group China Ltd., Room 1905, 19/F, Nam Wo Hong Bldg., 148 Wing Lok Street, Sheung Wang, Hong Kong; and Room 1119, 11/F, Block B, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial ...	80 FR [INSERT FR PAGE NUMBER], 11/12/2015.
	Biznest, LTD, Room 927 9/F Far East Consortium Building, 121 Des Voeux Road C, Central District, Hong Kong; and 4/F, Hong Kong Trade Centre, 161-167 Des Voeux Road, Central, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial ...	76 FR 44259, 7/25/11. 80 FR [INSERT FR PAGE NUMBER], 11/12/2015.
	Caprice Group Ltd., Room 1119, 11/F, Block B1, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong; and Unit B1, G/F Pioneer Building, 213 Wai Yip St., Kwun Tong, Kowloon, Hong Kong; and Unit A, G/F, Pioneer Building, 213 Wai Yip St., Kwun Tong, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial ...	80 FR [INSERT FR PAGE NUMBER], 11/12/2015.
	Giant Base Asia Limited, Room 2205, 22/F, Kowloon Building, 555 Nathan Road, Hong Kong; and Flat E, Block 1, 12/F, Superluck Industrial Centre, Tsuen Wan, New Territories, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial ...	78 FR 18808, 03/28/13. 80 FR [INSERT FR PAGE NUMBER], 11/12/2015.
	Kitronix Display, Unit B1, G/F, Pioneer Building, 213 Wai Yip St., Kwun Tong, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial ...	80 FR [INSERT FR PAGE NUMBER], 11/12/2015.
	Jadeshine Engineering (HK) Co., Room 702, Boss Commercial Centre, Ferry Street 38, Kowloon, Hong Kong; and G/F BLK C 255 Sai Tau Wai DD 123 Lot 1307 Yuen Long, NT, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial ...	78 FR 18808, 03/28/13. 80 FR [INSERT FR PAGE NUMBER], 11/12/2015.
	JLD Technology, Hong Kong Co., Ltd., Room 1237, Pacific Trade Centre, No. 2 Kai Hing Road, Kowloon Bay, Hong Kong; and Room 301-2, Hang Seng Wanchai Building, 3rd Floor, No. 200 Hennessy Road, Wanchai, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial ...	79 FR 32441, 6/5/14. 80 FR [INSERT FR PAGE NUMBER], 11/12/2015.

Country	Entity	License requirement	License review policy	Federal Register citation
*	<p data-bbox="383 279 737 611">Kinglead Electronics Co., Ltd., a.k.a., the following four aliases: —Kinglead International Trading; —Kinglead Trading; —Kinglead International Trading Limited; <i>and</i> —Phonide Electronics Limited Room 1041 Pacific Trade Center, No. 2 Kai Hing Road, Kowloon Bay, Hong Kong; <i>and</i> B5-3, 29/F, Legend Tower, 7 Shing Yip Street, Kwun Tong, Kowloon, Hong Kong (See alternate address under China).</p>	<p data-bbox="756 279 984 348">For all items subject to the EAR. (See § 744.11 of the EAR).</p>	<p data-bbox="1013 279 1240 302">Presumption of denial ...</p>	<p data-bbox="1268 279 1458 396">79 FR 32441, 6/5/14. 80 FR [INSERT FR PAGE NUMBER], 11/12/2015.</p>
*	<p data-bbox="383 667 737 926">PRC Lode Technology Company, a.k.a., the following one alias: —Lode International Limited. Room 1019–1020 Nan Fung Centre, 264–298 Castle Peak Road, Tsuen Wan New Territories, Hong Kong; <i>and</i> Room 1522 Nan Fung Centre, 264–298 Castle Peak Road, Tsuen Wan New Territories, Hong Kong (See alternate addresses under China).</p>	<p data-bbox="756 667 984 737">For all items subject to the EAR. (See § 744.11 of the EAR).</p>	<p data-bbox="1013 667 1240 690">Presumption of denial ...</p>	<p data-bbox="1268 667 1490 764">79 FR 44680, 8/1/2014. 80 FR [INSERT FR PAGE NUMBER], 11/12/2015.</p>
*	<p data-bbox="383 982 737 1125">Reekay Technology Ltd., a.k.a., the following one alias: —Reekay Technology. Suite 502, 5th Floor Arion Commercial Centre, No. 2–12 Queens Road West, Sheung Wan, Hong Kong</p>	<p data-bbox="756 982 984 1052">For all items subject to the EAR. (See § 744.11 of the EAR).</p>	<p data-bbox="1013 982 1240 1005">Presumption of denial ...</p>	<p data-bbox="1268 982 1458 1052">80 FR [INSERT FR PAGE NUMBER], 11/12/2015.</p>
*	<p data-bbox="383 1182 737 1373">Serko Limited, Room 704 7/F, Landwide Commercial Building, 118–120 Austin Rd, Tsim Sha Tsui, Hong Kong; <i>and</i> Room 1509, Unit A, 15th Floor, Mai Shun Industrial Building, No. 18–24 Kwai Cheong Road, New Territories, Hong Kong.</p>	<p data-bbox="756 1182 984 1251">For all items subject to the EAR. (See § 744.11 of the EAR).</p>	<p data-bbox="1013 1182 1240 1205">Presumption of denial ...</p>	<p data-bbox="1268 1182 1479 1278">77 FR 61249, 10/9/12. 80 FR [INSERT FR PAGE NUMBER], 11/12/2015.</p>
*	<p data-bbox="383 1430 737 1755">Sky Rise Technology Ltd., a.k.a., the following one alias: —Sky Rise Tech. Room 1905, 19/F, Nam Wo Hong Bldg., 148 Wing Lok Street, Sheung Wang, Hong Kong; <i>and</i> Room 1118, 11/F, Block B1, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong; <i>and</i> Room 1119, 11/F, Block B, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong (See also address under China).</p>	<p data-bbox="756 1430 984 1499">For all items subject to the EAR. (See § 744.11 of the EAR).</p>	<p data-bbox="1013 1430 1240 1453">Presumption of denial ...</p>	<p data-bbox="1268 1430 1458 1499">80 FR [INSERT FR PAGE NUMBER], 11/12/2015.</p>

Country	Entity	License requirement	License review policy	Federal Register citation
*	<p data-bbox="383 279 737 323">* Tex-Co Logistics Ltd., a.k.a., the following one alias: —Tex-Co Hongxin Logistics Limited. GF Seapower Industrial Building 177, Hoi Bun Road, Kowloon, Hong Kong, <i>and</i> Room 2202, 22F, Causeway Bay Plaza 1, 489 Hennessey Road, Causeway Bay, Hong Kong, <i>and</i> Room B03, 6/F, Cheong Wah Factory Building, 39–41 Sheung Heung Road, Tokwawan, Kowloon, Hong Kong; <i>and</i> Room G, 6/F Winner Building, 36 Man Yue Street, Hung Hom, Kowloon.</p> <p data-bbox="383 638 737 1041">* TiMi Technologies Co., Ltd., a.k.a., the following two aliases: —TiMi Technology Co. Ltd. —TiMi Tech. Room 1119, 11/F, Block B, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong; <i>and</i> Room 1118, 11/F, Block B1, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong; <i>and</i> Unit A, G/F, Pioneer Building, 213 Wai Yip St., Kwun Tong, Kowloon, Hong Kong; <i>and</i> Room 1905, 19/F, Nam Wo Hong Bldg., 148 Wing Lok Street, Sheung Wang, Hong Kong (See also addresses under China).</p>	<p data-bbox="760 279 984 348">* For all items subject to the EAR. (See § 744.11 of the EAR).</p> <p data-bbox="760 638 984 707">* For all items subject to the EAR. (See § 744.11 of the EAR).</p>	<p data-bbox="1011 279 1247 302">* Presumption of denial ...</p> <p data-bbox="1011 638 1247 661">* Presumption of denial ...</p>	<p data-bbox="1268 279 1459 396">* 75 FR 7358, 2/19/10. 80 FR [INSERT FR PAGE NUMBER], 11/12/2015.</p> <p data-bbox="1268 638 1459 707">* 80 FR [INSERT FR PAGE NUMBER], 11/12/2015.</p>
*	<p data-bbox="383 1098 737 1142">* Wang Wei, a.k.a., the following one alias: —Jack Wang. Room 1905, 19/F, Nam Wo Hong Bldg., 148 Wing Lok Street, Sheung Wang, Hong Kong; <i>and</i> Room 1118, 11/F, Block B, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong; <i>and</i> Room 1119, 11/F, Block B, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong (See also addresses under China).</p>	<p data-bbox="760 1098 984 1167">* For all items subject to the EAR. (See § 744.11 of the EAR).</p>	<p data-bbox="1011 1098 1247 1121">* Presumption of denial ...</p>	<p data-bbox="1268 1098 1459 1167">* 80 FR [INSERT FR PAGE NUMBER], 11/12/2015.</p>
*	<p data-bbox="383 1486 737 1530">* Yeraz, LTD, a.k.a., the following one alias: —Mikrocity HK Limited. Room 927 9/F Far East Consortium Building, 121 Des Voeux Road C, Central District, Hong Kong; <i>and</i> Room 402–403, 4/F, Hong Kong Trade Centre, 161–167 Des Voeux Road, Central, Hong Kong.</p>	<p data-bbox="760 1486 984 1556">* For all items subject to the EAR. (See § 744.11 of the EAR).</p>	<p data-bbox="1011 1486 1247 1509">* Presumption of denial ...</p>	<p data-bbox="1268 1486 1484 1581">* 76 FR 44259, 7/25/11. 80 FR [INSERT FR PAGE NUMBER], 11/12/2015.</p>
*	<p data-bbox="383 1734 737 1745">* *</p>	<p data-bbox="760 1734 984 1745">* *</p>	<p data-bbox="1011 1734 1247 1745">* *</p>	<p data-bbox="1268 1734 1459 1745">* *</p>

Dated: November 5, 2015.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2015-28552 Filed 11-10-15; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-419F]

Schedules of Controlled Substances: Placement of Eluxadoline Into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.
ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Administrator of the Drug Enforcement Administration places the substance 5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl]][(1S)-1-(4-phenyl-1*H*-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid (eluxadoline), including its salts, isomers, and salts of isomers, into schedule IV of the Controlled Substances Act. This scheduling action is pursuant to the Controlled Substances Act which requires that such actions be made on the record after opportunity for a hearing through formal rulemaking. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule IV controlled substances on persons who handle (manufacture, distribute, dispense, import, export, engage in research, conduct instructional activities, or possess) or propose to handle eluxadoline.

DATES: *Effective date:* December 17, 2015.

FOR FURTHER INFORMATION CONTACT: John R. Scherbenske, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152, Telephone: (202) 598-6812.

SUPPLEMENTARY INFORMATION:

Legal Authority

The Drug Enforcement Administration (DEA) implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801-971. Titles II and III are referred to as the “Controlled Substances Act” and the “Controlled Substances Import and Export Act,”

respectively, and are collectively referred to as the “Controlled Substances Act” or the “CSA” for the purpose of this action. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while ensuring an adequate supply is available for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, each controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use in treatment in the United States, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of controlled substances is published at 21 CFR part 1308.

Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, “add to such a schedule or transfer between such schedules any drug or other substance if he (A) finds that such drug or other substance has a potential for abuse, and (B) makes with respect to such drug or other substance the findings prescribed by [21 U.S.C. 812(b)] for the schedule in which such drug is to be placed * * *.” The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

The 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 her 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 action was initiated

¹ As set forth 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. Accordingly, all subsequent references to “Secretary” have been replaced with “Assistant Secretary.”

at the request of the Assistant Secretary of the HHS and imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to controlled substances, including those specific to schedule IV controlled substances, on persons who handle or propose to handle eluxadoline.

Background

Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl]][(1S)-1-(4-phenyl-1*H*-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid), is a new molecular entity with central nervous system opioid properties. Eluxadoline has mixed mu opioid receptor (MOR) and kappa opioid receptor (KOR) agonist and delta opioid receptor (DOR) antagonist properties. The Food and Drug Administration (FDA) approved eluxadoline (brand name “VIBERZI”) as a prescription drug for the treatment of irritable bowel syndrome with diarrhea (IBS-D) on May 27, 2015.

DEA and HHS Eight Factor Analyses

On May 5, 2015, the HHS provided the DEA with a scientific and medical evaluation document prepared by the FDA entitled “Basis for the Recommendation to Place Eluxadoline in Schedule IV of the Controlled Substances Act.” After considering the eight factors in 21 U.S.C. 811(c), including consideration of the substance’s abuse potential, legitimate medical use, and dependence liability, the Assistant Secretary of the HHS recommended that eluxadoline be controlled in schedule IV of the CSA. In response, the DEA completed its own eight-factor analysis of eluxadoline. Both the DEA and HHS analyses and other relevant documents are available in their entirety in the public docket of this rule (Docket Number DEA-419) at <http://www.regulations.gov> under “Supporting Documents.”²

Determination to Schedule Eluxadoline

After a review of the available data, including the scientific and medical evaluation and the scheduling recommendation from the HHS, the Administrator of the DEA published in the **Federal Register** a notice of proposed rulemaking (NPRM) entitled “Schedules of Controlled Substances: Placement of Eluxadoline into Schedule

² Although the published notice of proposed rulemaking stated that such items had been placed into the docket on regulations.gov, the Administration discovered in preparing this final rule that the HHS analysis had in fact not been posted. However, that document was available for review at DEA. The DEA posted the cited analysis to regulations.gov upon discovery of the error.

IV” which proposed placement of eluxadoline in schedule IV of the CSA. 80 FR 48044, August 11, 2015. The proposed rule provided an opportunity for interested persons to file a request for hearing in accordance with DEA regulations by September 10, 2015. No requests for such a hearing were received by the DEA. The NPRM also provided an opportunity for interested persons to submit written comments on the proposal on or before September 10, 2015.

Comments Received

The DEA received two comments on the proposed rule to schedule eluxadoline. One commenter supported controlling eluxadoline as a schedule IV controlled substance. One commenter opposed the control of eluxadoline as a schedule IV substance, and suggested it be controlled as a schedule V substance instead.

Support for the Proposed Rule. One commenter agreed with the DEA’s proposal to control eluxadoline as a schedule IV controlled substance, and stated that the public health (specifically, an unmet medical need) necessitates an immediate effective date for the final order controlling eluxadoline.

DEA Response. The DEA appreciates the comment in support of this rulemaking. Generally, DEA scheduling actions are effective 30 days from the date of publication of the final rule in the **Federal Register**. 21 CFR 1308.45; see also 5 U.S.C. 553(d). The DEA believes that providing 30 days for this rule to become effective is both expeditious and sufficient to allow handlers to comply with regulatory requirements for handling Schedule IV controlled substances. Both the HHS’ and the DEA’s scientific and medical analyses, the data collectively suggest that eluxadoline does have sufficient abuse potential and the DEA does not agree that eluxadoline’s effective date should be the date of publication of the final rule.

Opposition to the Proposed Rule. One commenter opposed the proposal to control eluxadoline as a schedule IV controlled substance, stating “I do not think that eluxadoline meets the factor [5] requirements for scheduling under schedule IV due to there being no general widespread use throughout other countries.” The commenter also stated that the best approach would be to place eluxadoline in schedule V, rather than schedule IV.

DEA Response. Although eluxadoline is a new chemical entity and information on actual abuse is not currently available, there is a sufficient

factual basis to meet the requirements of Factor 5 (the scope, duration, and significance of abuse). The legislative history of the CSA provides guidance regarding the assessment of a new drug’s potential for abuse. The legislative history of the CSA provides that a substance may have a potential for abuse if: “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.” Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444 (1970); as reprinted in 1970 U.S.C.C.A.N. 4566, 4601. As discussed in the HHS and the DEA eight-factor analyses, both pre-clinical and clinical studies indicate eluxadoline shares pharmacological similarities with schedule IV drugs such as butorphanol and pentazocine and has similar abuse potential.

In addition, the HHS and DEA eight-factor analyses support the finding that the overall abuse potential of eluxadoline is comparable to schedule IV substances such as pentazocine and butorphanol. This indicates that placement in schedule IV is appropriate rather than schedule V.

Scheduling Conclusion

Based on consideration of all comments, the scientific and medical evaluation and accompanying recommendation of the HHS, and the DEA’s consideration of its own eight-factor analysis, the Administrator finds that these facts and all relevant data demonstrate substantial evidence of potential for abuse of eluxadoline. As such, the DEA is scheduling eluxadoline as a controlled substance under the CSA.

Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA outlines the findings required for placing 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 Health of the HHS and review of all available data, the Administrator of the DEA, pursuant to 21 U.S.C. 812(b)(4), finds that:

(1) 5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl]][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid (eluxadoline) has a low potential for abuse relative to the drugs or other substances in schedule III. The overall abuse potential of eluxadoline is comparable to schedule IV substances such as pentazocine and butorphanol;

(2) 5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl]][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid (eluxadoline) has a currently accepted medical use in treatment in the United States. Recently, the FDA approved eluxadoline as a prescription drug for the treatment of IBS-D. Therefore, eluxadoline has a currently accepted medical use in treatment in the United States; and

(3) Abuse of 5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl]][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid (eluxadoline) may lead to limited psychological dependence similar to that of schedule IV drugs, but less than that of schedule III drugs.

Based on these findings, the Administrator of the DEA concludes that eluxadoline, including its salts, isomers, and salts of isomers, warrants control in schedule IV of the CSA. 21 U.S.C. 812(b)(4).

Requirements for Handling Eluxadoline

Upon the effective date of this final rule, any person who handles eluxadoline is subject to the CSA’s schedule IV regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, exporting, engagement in research, and conduct of instructional activities, of schedule IV controlled substances including the following:

1. *Registration.* Any person who handles (manufactures, distributes, dispenses, imports, exports, engages in research, or conducts instructional activities with) eluxadoline, or who desires to handle eluxadoline, must 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 as of December 14, 2015. Any person who currently handles eluxadoline and is not registered with the DEA must submit an application for registration and may not continue to handle eluxadoline as of December 14, 2015 unless the DEA has approved that application, pursuant to 21 U.S.C. 822, 823, 957, and 958, and

in accordance with 21 CFR parts 1301 and 1312.

2. *Security.* Eluxadoline is subject to schedule III–V security requirements and must be handled and stored pursuant to 21 U.S.C. 823 and in accordance with 21 CFR 1301.71–1301.93, as of December 14, 2015.

3. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of eluxadoline must comply with 21 U.S.C. 825 and 958(e) and be in accordance with 21 CFR part 1302, as of December 14, 2015.

4. *Inventory.* Every DEA registrant who possesses any quantity of eluxadoline on the effective date of this final rule must take an inventory of all stocks of eluxadoline on hand as of December 14, 2015, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a), (d), and (e).

Any person who becomes registered with the DEA after November 12, 2015 must take an initial inventory of all stocks of controlled substances (including eluxadoline) 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(a), (b), and (e).

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including eluxadoline) 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.

5. *Records.* All DEA registrants must maintain records with respect to eluxadoline pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304 and 1312 and § 1307.11, as of December 14, 2015.

6. *Prescriptions.* All prescriptions for eluxadoline or products containing eluxadoline must comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR part 1306 and subpart C of 21 CFR part 1311 as of December 14, 2015.

7. *Importation and Exportation.* All importation and exportation of eluxadoline must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and be in accordance with 21 CFR part 1312 as of December 14, 2015.

8. *Liability.* Any activity involving eluxadoline not authorized by, or in violation of, the CSA, occurring as of December 14, 2015 is unlawful, and may subject the person to administrative, civil, and/or criminal proceedings.

Regulatory Analyses

Executive Orders 12866 and 13563

In accordance with 21 U.S.C. 811(a), this scheduling action is subject to formal rulemaking procedures done “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 pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform 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 rulemaking does not have federalism implications warranting the application of Executive Order 13132. The 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 rule does not have tribal implications warranting the application of Executive Order 13175. The rule 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.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. The purpose of this final rule is to place eluxadoline, including its salts, isomers, and salts of isomers, into schedule IV of the CSA. No less restrictive measures (*i.e.*, non-control, or control in schedule V) enable the DEA to meet its statutory obligations under the CSA. In preparing this certification, the DEA has assessed economic impact by size category and has considered costs with respect to the

various DEA registrant business activity classes.

Eluxadoline is a new molecular entity which has not yet been marketed in the United States or any other country. The DEA has no basis to determine the level of contracted or outsourced manufacturing activities or the breadth of the distribution network. Furthermore, due to the wide variety of unidentifiable and unquantifiable variables that could potentially influence the dispensing and distribution rates of new pharmaceutical drugs, the DEA is unable to determine the number of potential small entities that might handle eluxadoline. However, the DEA estimates that all persons who would handle, or propose to handle, eluxadoline are currently registered with the DEA to handle schedule IV controlled substances, because it is a pharmaceutical controlled substance intended for medical treatment. Accordingly, the number of DEA registrations authorized to handle schedule IV controlled substances is a reasonable estimate for the maximum number of eluxadoline handlers. Therefore, the DEA estimates that 1.6 million (1,554,254 as of June 2015) controlled substance registrations, representing approximately 427,584 entities, would be the maximum number of entities affected by this final rule. The DEA estimates that 418,141 (97.8%) of 427,584 affected entities are “small entities” in accordance with the RFA and SBA size standards.

The DEA anticipates that prospective eluxadoline handlers already handle other schedule IV controlled substances and that the cost impact as a result of placing eluxadoline in schedule IV would be nominal. As the anticipated eluxadoline handlers already handle other schedule IV controlled substances, they already have DEA registrations and the required security and recordkeeping processes, equipment, and facilities in place, and would only require a nominal increase in security, inventory, recordkeeping and labeling costs.

As discussed above, while the DEA does not have a basis to estimate the number of affected entities, the DEA estimates that the maximum number of affected entities is 427,584 of which 418,141 are estimated to be small entities. Since the affected entities are expected to handle other schedule IV controlled substances and maintain security and recordkeeping facilities and processes consistent with schedule IV controlled substances, the DEA estimates any economic impact will be nominal.

Because of these facts, this final rule will not result in a significant economic

impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The DEA has determined and certifies pursuant to the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.*, 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 provisions of UMRA.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement 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.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA)). This rule will not result in: an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. However, pursuant to the CRA, the DEA has submitted a copy of this final rule to both Houses of Congress and to the Comptroller General.

Administrative Procedure Act

The APA requires the publication of a substantive rule to be made not less than 30 days before its effective date. 5 U.S.C. 553(d). However, one exception is “as otherwise provided by the agency for good cause found and published with the rule.” As fully discussed above in response to the comment suggesting an immediate effective date, an immediate effective date is necessary in this case because there are limited therapeutic options currently available

to patients with IBS–D and the eluxadoline NDA received priority review with FDA. Therefore, it is unnecessary to delay the effective date of this final rule by 30 days, and this rule shall take effect immediately upon publication.

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, 21 CFR part 1308 is amended to read 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), unless otherwise noted.

■ 2. Amend § 1308.14 by adding paragraph (g)(3) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(g) * * *

(3) Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl]](1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino)methyl]-2-methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and salts of isomers (9725).

Dated: November 5, 2015.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2015–28718 Filed 11–10–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 570

[Docket No. FR 5797–I–01]

RIN 2506–AC39

Changes to Accounting Requirements for the Community Development Block Grants (CDBG) Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim final rule.

SUMMARY: This rule makes several changes to the existing Community Development Block Grant (CDBG) program regulations in order to better track the use of grant funds and improve accounting procedures in the program. Through this rule, HUD requires grantees to commence tracking the

obligations and expenditures of funds for each specific fiscal year grant, rather than track such information cumulatively. In order to effectively implement this accounting change, changes are needed to the regulations applicable to affected grants, such as the program-specific regulations, consolidated plan regulations, and methods to calculate the cap on administrative and planning expenses. While amending these regulations to conform to and support this accounting practice in applicable regulations, HUD is also making certain grammatical and other technical corrections in those regulations.

DATES: *Effective date:* December 14, 2015.

Comment due date: January 11, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the

above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, Office of Community Planning and Development, 451 7th Street SW., Suite 7286, Washington, DC 20410 at 202-708-3587, (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service, toll-free, at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The CDBG Program

The CDBG program is a flexible program that provides communities with resources to address a wide range of unique community development needs. The CDBG program provides annual grants on a formula basis to units of general local government and States. The annual CDBG appropriation is allocated between metropolitan cities and urban counties, which are referred to as “entitlement areas,” and States, which must distribute the funds to their units of general local government, referred to as “nonentitlement areas.” HUD determines the amount of each grant by using a formula comprised of several measures of community need, including the extent of poverty, population, housing overcrowding, age of housing, and population growth lag.

A grantee must develop and follow a consolidated plan describing the planned use of CDBG funds, which includes a detailed plan that provides for and encourages citizen participation. This integral process emphasizes participation by persons of low or moderate income, particularly residents of predominantly low- and moderate-income neighborhoods, slum or blighted areas, and areas in which the grantee proposes to use CDBG funds. Not less than 70 percent of CDBG funds must be used for activities that benefit low- and moderate-income persons. In addition, each funded activity must meet one of the following national objectives for the program: Benefit low- and moderate-

income persons, prevent or eliminate slums or blight, or address community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community for which other funding is not available.

The regulations for the CDBG program are codified in 24 CFR part 570 (entitled “Community Development Block Grants”). The regulations governing the CDBG annual plan and citizen participation requirements are codified at 24 CFR part 91 (entitled “Consolidated Submissions for Community Planning and Development Programs”).

B. CDBG Accounting Requirements

CDBG grants funds are currently disbursed through the Integrated Disbursement and Information System (IDIS) on a “first-in, first-out” (FIFO) basis. Under this methodology, CDBG grantees do not designate a specific fiscal year grant in IDIS when funding an activity or when creating an expenditure voucher. In general, all obligations and disbursements are recorded against the earliest annual grant with an available balance, thereby exhausting the oldest grant available before recording expenditures against the next grant.

Grantees’ accounting systems, on the other hand, typically track expenditures according to each annual grant. During any given time period, grantees expend funds from multiple grants for a range of activities that have a variety of implementation schedules. Expenditures are incurred against more recent grants for activities that are on schedule; and, often simultaneously, expenditures are incurred against earlier annual grants for activities that experience acceptable delays.

These two distinct accounting methods often complicate reconciliation between grantees’ accounting records and IDIS’s FIFO records. The revised methodology will simplify reconciliation by aligning the accounting practices used by HUD and those used by grantees.

HUD is cognizant that Fiscal Year (FY) 2015 funding and formula allocations are underway, but the revised methodology is now available and, through this rule, HUD directs CDBG grantees to commence using the revised methodology. For the FY 2015 and subsequent fiscal year grants, IDIS will support grant-specific accounting. Therefore, as of the effective date of this interim rule, when obligating funds to be expended for a CDBG activity (*i.e.*, when funding an activity in IDIS), grantees must identify the specific

annual grant that is the source of the funds. When creating an expenditure voucher, HUD, through IDIS, will disburse the funds according to the specific annual grant that was obligated to that activity.

In order to complement and support this accounting change, conforming changes are needed to the regulations covering affected FY grants to reflect this accounting practice, such as clarifying which accounting practice is utilized, revising records retention requirements, and conforming the calculation of the cap on administrative and planning expenses. Conforming changes are not only needed to the CDBG regulations in 24 CFR part 570 but also to the CDBG planning and citizen participation regulations in part 91. In addition, certain grammatical and other technical corrections need to be made to the CDBG regulations.

The following section of this preamble provides a section-by-section overview of the regulatory changes.

II. This Interim Rule—Section-by-Section Changes

Action Plans (§§ 91.220, 91.320, 91.325 and 91.505)

HUD revises those provisions regarding the CDBG program components of the action plans for entitlements at § 91.220(l) and states at § 91.320(l). The interim rule adds clarifying language to reiterate that the available resources for that annual action plan may include a variety of sources of funding in addition to the annual grant.

For State CDBG recipients, HUD clarifies § 91.320(l) to address program income funds that are retained by units of general local government. By including locally retained program income funds, such as general program income and revolving loan funds, the State’s action plan will include all the CDBG funds available throughout the State, regardless of whether those funds are retained by the State or units of general local government.

For state CDBG recipients, HUD amends § 91.325(b)(4)(ii), which provides that the State shall certify that 70 percent of the amount expended shall principally benefit low- and moderate-income families, on a program year basis. This regulatory provision is inconsistent with § 570.484, which requires the same certification to be provided on an annual grant basis. Therefore, § 91.325(b)(4)(ii) is amended to be consistent with § 570.484.

HUD amends § 91.505(a)(2) to clarify that an amendment would be necessary for the use of program income,

repayments, or reallocations that were not previously included in an action plan.

Definition of Origin Year (§§ 570.3 and 570.481)

The interim rule adds a definition to §§ 570.3 and 570.481(a)(3) for the term “origin year” to mean the Federal fiscal year in which the annual grant funds were appropriated. Current regulations use the term “grant year,” which has often been confused with a grantee’s program year. The term “origin year” is intended to reinforce specificity concerning any one annual grant and support grant-specific accounting. In addition to the new definition, the interim rule makes corresponding language changes throughout parts 91 and 570.

Treasury Account Cancellations (§§ 570.480(i) and 570.200(k))

The interim rule adds §§ 570.480(i) and 570.200(k) to incorporate the requirements of 31 U.S.C. 1552, which states that on September 30 of the 5th fiscal year after the period of availability for obligation of a fixed appropriation account ends, the United States Treasury account shall be canceled and any remaining balance (whether obligated or unobligated) shall be canceled and therefore not available for obligation or expenditure for any purpose. HUD’s obligation period for CDBG is typically 3 fiscal years, including the origin year (as stated in each annual appropriations act). HUD obligates and makes the funds available to grantees as soon as possible, but has until the end of 3 fiscal years to do so. For example, a CDBG grant appropriated for Fiscal Year 2015 must be obligated by HUD by the end of Fiscal Year 2017, and any unexpended funds will be canceled and cease to be available on September 30, 2022. HUD reserves the right, however, to require an earlier expenditure and drawdown deadline under a grant agreement due to end-of-year accounting and timing issues. This provision is applicable to funds in the grantee’s line of credit and any funds returned to the line of credit. However, this statute does not apply to funds repaid to a local account or program income deposited in a local account. CDBG funds have rarely been canceled because the FIFO accounting method disperses funds from the oldest source grant first, and timely expenditure of grant funds would prevent the grantee from having as many years’ worth of grant funds in its line of credit.

Entitlement Administration and Planning Cap (§ 570.200)

In annual appropriations acts, Congress limits the amount grantees may use for planning, management development, and administration to not more than 20 percent of each grant. Under the FIFO method of accounting in IDIS, grantees would draw funds without distinguishing funds by origin year, making the application of a 20 percent limit to any one grant impractical for HUD to monitor. Current regulations at § 570.200(g) base the 20 percent limit upon obligations in a given program year, relative to the amount of the most recent grant plus program income. Therefore, § 570.200(g) is revised to better reflect the limitations imposed by annual appropriations acts.

Through this rule, HUD divides § 570.200(g) into two distinct compliance tests. The current test, retained and redesignated § 570.200(g)(2), which determines compliance based upon *obligations* of both grant funds and program income, will apply to all prior and future program years. For grants made in FY 2015 and subsequent years, an additional test is included at § 570.200(g)(1), which would limit planning and administration *expenditures* to no more than 20 percent of each separate origin year grant (excluding program income). This new test will be used to determine compliance with the annual appropriations acts requirement at the end of the grant. The key difference between the two tests is that the existing test addresses program income and the new test does not. The reason that two tests are necessary is because the existing test allows program income to be used in lieu of grant funds for planning, management development, and administration costs, thereby ensuring that grantees are compliant with the cash management principles that require program income to be spent ahead of draws of Treasury funds.

These two tests measure different things over different time periods. The existing test (the *program year test*) limits *obligations* of funds made by the grantee during a program year. The amount of funds obligated for planning and administrative costs is limited to 20 percent of the sum of the origin year grant amount for that program year plus the amount of program income received by the grantee (and all subrecipients) during that program year. Compliance is determined at the end of each program year based on the grantee’s annual performance report submission. This test allows obligations of program

income for planning and general administration cost to support grantee compliance with § 570.504(b)(2), which requires that program income be substantially disbursed before withdrawals of grant funds from the United States Treasury.

The *origin year grant test* limits *expenditures* for planning and administrative costs against a given origin year’s grant. For any given origin year grant, compliance will be determined during the grant closeout. For purposes of the second test, it does not matter when the funds were obligated or expended. Beginning with origin year 2015 grants and with FY 2015 program years, grantees must ensure that they comply with both tests. Grantees are cautioned that compliance with one test does not automatically ensure compliance with the other test.

HUD recognizes that CDBG grantees are administering programs that typically have multiple grants open at any given time. The interim rule adds language at § 570.200(g) to reiterate that administration and planning costs support the general operation of a grantee’s CDBG program, and thus are not tied to any specific origin year or CDBG grant. A grantee may use funds from any origin year grant for administration and planning costs for any CDBG grant. This provision is limited to only administration and planning costs and does not include staff and overhead costs directly related to carrying out activities eligible under § 570.201 through § 570.204, since those costs are eligible as part of such activities and allocable to specific origin year grants.

Eligible Activities: Public Services (§ 570.201)

HUD revises regulations at § 570.201 in order to clarify that the public service cap determination is applicable to nonentitlement grantees in Hawaii and recipients of insular area funds under the CDBG program.

State CDBG Program Administrative Requirements (§ 570.489)

HUD revises the regulations for State administrative costs in § 570.489. Redundancies are removed and clarifying language is added to § 570.489(a)(1)(i)(ii) and (iii) and § 570.489(e)(3). Current regulations at § 570.489(a)(1)(v) allow State CDBG grantees the option of using cumulative accounting of administrative costs, consistent with the FIFO accounting method. Under the new grant-based accounting, for origin year 2015 grants and subsequent grants, State CDBG grantees will no longer have the option

of cumulative accounting of the State's administrative costs and instead must use year-to-year tracking. The cumulative method will only continue to be available for State administrative expenses charged to FY 2014 and prior fiscal year grants.

HUD clarifies § 570.489(a)(3) to explain how HUD determines compliance with the planning and administration cost cap. While this provision is already grant-specific, the current calculation incorporates program income into the 20 percent administrative and planning cap. Therefore, the interim rule clarifies the compliance test at § 570.489(a)(3) by dividing it into multiple parts. Section 570.489(a)(3)(i) describes administration costs for both States and units of general local government. Section 570.489(a)(3)(ii) maintains current language of the administrative and planning cap, with added clarity. Section 570.489(a)(3)(iii) adds a second compliance test based solely upon use of funds from each annual grant (excluding program income) beginning with origin year 2015 and subsequent years' grants. The second compliance test will demonstrate compliance with annual appropriations acts limiting the amount grantees may use for planning, management development, and administration to not more than 20 percent of each grant.

As noted under the discussion of changes made to § 570.200, HUD recognizes that CDBG grantees are administering programs that typically have multiple grants open at any given time. Similar to the change made to § 570.200(g), the interim rule revises § 570.489(a)(3)(iv) to reiterate that administration and planning costs support the general operation of a grantee's CDBG program, and thus are not tied to any specific origin year or CDBG grant. A grantee may use funds from any origin year grant for administration and planning costs for any CDBG grant. This provision is limited to only administration and planning costs and does not include staff and overhead costs directly related to carrying out other eligible activities, since those costs are eligible as part of such activities and allocable to specific origin year grants.

Section 570.489(e)(3) is edited for clarity and to remove redundancies.

Records To Be Maintained (§ 570.506)

This rule adds language in § 570.506 specifying that grantees' records pertaining to obligations, expenditures, and drawdowns must be able to relate financial transactions to either a specific

origin year's grant or to program income received during a specific program year.

Grant Closeout Procedures—Entitlement CDBG (§§ 570.509, 570.513)

The current regulations at § 570.509 have primarily applied when an entitlement CDBG grantee discontinued its participation in the program as a grantee. The interim rule will now permit and necessitate close out of each origin year grant from HUD. Starting with FY 2015 origin year grants, each year's grant will be closed out when all activity associated with the grant is completed.

This necessitates several changes to the closeout process, which also result in conforming changes to other portions of the regulations. The grant funds, as well as program income received during the program year corresponding to the grant's origin year, must be fully expended before the grant can be closed out. In addition, the grantee must enter final accomplishment data and all activities on which those funds were expended must be reported as completed in a final annual report. The interim rule clarifies that, in order to close out a grant, any unexpended program income received during the program year associated with the grant's origin year must be included in a subsequent year's action plan, thereby rolling forward those available resources onto a more recent action plan with ongoing activities. The funds will be included in the section describing the CDBG funds available pursuant to § 91.220(l), thereby allowing that prior origin year's grant to be closed out.

In addition, the interim rule adds closeout criteria based upon the changes to the administration and planning cap at § 570.200(g).

The interim rule change regarding expenditure of associated program income before grant closeout triggers corresponding changes to § 570.513, lump sum drawdown. A grant cannot be closed out if grant funds or associated program income remain unexpended in a deposit account subject to an existing lump sum drawdown agreement. The change to § 570.513 will require a grantee to execute a new lump sum drawdown agreement covering any unexpended funds, and that program income must be identified in the current program year action plan.

Minor and Technical Changes

The interim rule makes minor changes to §§ 91.505, 570.206, 570.410, and 570.503 for regulatory and statutory cross-references and grammar. The interim rule also makes various technical changes to incorporate

administrative requirements in 2 CFR part 200. These changes include a new paragraph § 570.485(d) to clarify that HUD is authorized to establish specific conditions on grants to States in accordance with 2 CFR 200.207; changes to § 570.489(g) to make clear that States can make subrecipient and contractor determinations in accordance with 2 CFR 200.330; and a new paragraph § 570.489(o), which states that HUD will close out grants to States in accordance with 2 CFR 200.343.

III. Specific Issues for Comment

HUD solicits and welcomes comments on all aspects of this interim rule. HUD also specifically solicits comment on the following topics related to the accounting methodology changes for CDBG. HUD seeks the view of grantees, other program participants and interested members of the public. HUD may, at a future date, offer regulatory changes addressing one or more of these topics.

1. Retention of Program Income by Local Governments (§ 570.489(e))

HUD solicits comments about the revisions made to § 570.489(e)(3)(ii)(B) beyond those made by this interim rule. The intent of the section is to reinforce the requirement that program income remains subject to CDBG requirements regardless of the status of any State award to a unit of general local government. The current language of this section uses terms such as "activity closeout" and "grant close out", as well as concepts such as "part of the unit of general local government's grant" and "part of the state's program year," and this language may not reflect HUD's intent as explicitly as contemplated by HUD. HUD therefore seeks comment on whether the regulatory language clearly reflects HUD's intent and, if not, what revisions are recommended to better convey the intent of this section.

2. Limitations on Local Retention of Program Income (§ 570.489(e))

HUD seeks information that better informs the nature of activities that continue with program income. For States that limit the local retention of program income, what types of limitations do States place upon the definition of the "same activity"? Do the limitations restrict the program income for the same activity in a very strict sense (*i.e.*, limited to the same work, at the same address, with the same beneficiaries)? Do the limitations generally reflect an activity type, such as housing rehabilitation; and, if so, what are the considerations for not classifying this as a revolving loan fund?

Do the limitations reflect multiple activities that are bundled into a single effort, such as a main street revitalization plan that might use program income from business loans for other activities in the vicinity, such as façade and side walk improvements along the same main street? Is tracking and reporting the use of these funds problematic, and what solutions have States found (especially for States that do not limit the local retention of program income)?

3. Entitlement Administration and Planning Cap (§§ 570.200 and 570.201(e))

HUD has some flexibility in the manner program income applies to the administration and planning cap at § 570.200(g) and the public service cap at § 570.201(e). Currently, program income received during the current program year is considered in the determination of compliance with § 570.200(g) and program income received during the prior program year is considered in the determination of compliance with § 570.201(e). HUD solicits comments regarding the possibility of making these two determinations match in terms of which program year is considered for compliance. In this regard, HUD seeks comment on whether compliance with both caps should be based on prior year receipts of program income or current year receipts, or whether the current distinction between the two should be maintained.

IV. Justification for Interim Rulemaking

HUD generally publishes rules for advance public comment in accordance with its rule on rulemaking at 24 CFR part 10. However, under 24 CFR 10.1, HUD may omit prior public notice and comment if it is “impracticable, unnecessary, or contrary to the public interest.” In this instance, HUD has determined that it is unnecessary to delay the effectiveness of this rule for advance public comment.

The interim rule provides that, for FY 2015 grants, Entitlement CDBG grantees are to track their obligations and expenditures of funds for each specific grant year. The scope of the interim regulatory amendments is limited to the change in the input of this information in IDIS and to those additional changes necessary to conform the regulations to the grant accounting system, such as the time periods of affected grants, records retention, and the calculation of the cap on administrative and planning expenses, along with minor clarifications and technical corrections.

This interim rule does not establish new and unfamiliar requirements for CDBG grantees. Rather the regulatory changes eliminate administrative burden on grantees by aligning CDBG accounting methodology, as reflected in IDIS, with the grant accounting system typically used by grantees, and the standard accounting practice of keeping track of grant commitments and expenditures on an annual grant basis.

Although, under the current regulations, Entitlement CDBG recipients have the option to track expenditures in a cumulative manner, HUD estimates that 80 to 90 percent of grantees adhere to the grant-specific accounting. In addition, the selection of the grant year is already required for State CDBG recipients when requesting funds, so grantees are already tracking this information.

Given that the overwhelming majority of CDBG grantees use grant-specific accounting (the use of which is also strongly recommended by HUD’s Office of Inspector General) HUD has the justification necessary to issue this rule as an interim rule. While a small percentage of CDBG grantees are not using this system, it is not a system that is unfamiliar to them. In addition, IDIS itself provides the reports and tools necessary to document compliance with the regulatory changes for all grantees.

And with the grant year-specific accounting, it is now possible for HUD to determine compliance with the administrative expenditure cap on a grant-specific basis. The revised accounting methods also necessitate these additional regulatory changes specifying how grantees are to handle closeout procedures and maintain records. Since the accounting changes are required by existing appropriations law, HUD believes that it is appropriate for the remaining regulatory changes to be effective for the current grant year through an interim rule.

Although HUD has determined that good cause exists to publish this rule for effect without prior solicitation of public comment, HUD recognizes the value and importance of public input in the rulemaking process. Accordingly, HUD is issuing these regulatory amendments on an interim basis and providing a 60-day public comment period. All comments will be considered in the development of the final rule.

V. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule

under Executive Order 12866 (entitled “Regulatory Planning and Review”). OMB determined that this rule was significant under the order, but not an economically significant regulatory action. The docket file is available for public inspection in the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339. The docket file is available for public inspection at the above address, or it may be viewed online at www.regulations.gov, under the above docket number. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

Information Collection Requirements

In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The information collection requirements contained in this interim rule have been submitted to the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2506-0117.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule will not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of UMRA.

Environmental Review

This interim rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or

new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As an initial matter, HUD notes that the scope of the rule is limited to accounting methodology, and does not add or modify other CDBG program requirements other than to provide grammatical and technical corrections. Further, accounting for grant funds by specific funding allocations is a practice used in other Federal programs, and so the requirements are not unfamiliar to, and may already be used by, CDBG grantees that also receive funding under such programs.

With respect to burden on small entities, as part of the development of HUD's Affirmatively Furthering Fair Housing (AFFH) final rule, HUD identified small entities participating in the CDBG program as those receiving a grant in FY 2015 of \$500,000 or less (small CDBG grantees).¹ The number of small CDBG grantees totaled 357 out of 1,258 CDBG grantees in FY 2015.

In this rule, HUD is now requiring small actions that were previously optional, but which many grantees were already performing. Further, any necessary accounting system changes would be one-time updates, rather than a recurring expense, and such costs would be reimbursed from the grantee's administrative expense account, funded by the CDBG grant. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's belief that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the program that would be affected by this rule are 14.218, 14.225, 14.228, and 14.248.

List of Subjects

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

Accordingly, for the reasons stated in the preamble, HUD is amending 24 CFR parts 91 and 570 as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

■ 2. In § 91.220, revise paragraphs (l)(1)(i) and (ii) to read as follows:

§ 91.220 Action plan.

- * * * * *
- (l) * * *
- (1) * * *

(i) A jurisdiction must describe activities planned with respect to all CDBG funds expected to be available during the program year, except that an amount generally not to exceed 10 percent of such total available CDBG funds may be excluded from the funds for which eligible activities are described if it has been identified for the contingency of cost overruns.

(ii) "CDBG funds expected to be available during the program year" includes all of the following:

- (A) The CDBG origin year grant.
- (B) Any program income expected to be received during the program year.
- (C) Any program income amounts not included in a prior action plan.
- (D) Any program income previously generated under a lump sum drawdown agreement for which a new agreement will be executed during the program year pursuant to 24 CFR 570.513(b).
- (E) Proceeds from Section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in its strategic plan.
- (F) Surplus from urban renewal settlements.
- (G) Reimbursements, other than program income, made to a local account.
- (H) Income from float-funded activities: The full amount of income expected to be generated by a float-funded activity must be shown, whether or not some or all of the income is expected to be received in a future program year. To assure that citizens understand the risks inherent in undertaking float-funded activities, the recipient must specify the total amount of program income expected to be received and the month(s) and year(s) that it expects the float-funded activity to generate such program income.

* * * * *

- 3. Amend § 91.320 as follows:
 - a. Capitalize the word "state" and "state's" each time it appears; and
 - b. Revise paragraph (k)(1).

The revision reads as follows:

§ 91.320 Action plan.

* * * * *

(k) * * *

(1) CDBG. The action plan must set forth the State's method of distribution.

(i) The method of distribution must contain a description of all criteria used to select applications from local governments for funding, including the relative importance of the criteria, where applicable. The method of distribution must provide sufficient information so that units of general local government will be able to understand

¹ See AFFH final rule published on July 16, 2015, at 80 FR 42272 (<http://www.gpo.gov/fdsys/pkg/FR-2015-07-16/pdf/2015-17032.pdf>).

and comment on it, understand what criteria and information their application will be judged on, and be able to prepare responsive applications. The method of distribution may provide a summary of the selection criteria, provided that all criteria are summarized and the details are set forth in application manuals or other official State publications that are widely distributed to eligible applicants.

(ii) The action plan must include a description of how all CDBG resources will be allocated among funding categories and the threshold factors and grant size limits that are to be applied. The total CDBG resources to be described in the action plan include all of the following:

- (A) The CDBG origin year grant.
- (B) Any program income expected to be returned to the State in accordance with 24 CFR 570.489(e)(3)(i) in the program year or not included in a prior action plan, and any program income expected to be received by any State revolving fund in accordance with 24 CFR 570.489(f)(2) in the program year or not included in a prior action plan.

(C) Reimbursements, other than program income, made to a local account.

(iii) If the State intends to help nonentitlement units of general local government apply for guaranteed loan funds under 24 CFR part 570, subpart M, it must describe available guarantee amounts and how applications will be selected for assistance. If a State elects to allow units of general local government to carry out community revitalization strategies, the method of distribution shall reflect the State's process and criteria for approving local government's revitalization strategies.

(iv) If the State permits units of general local government to retain program income per 24 CFR 570.489(e)(3) or establish local revolving funds per 24 CFR 570.489(f)(1), the State must include a description of each of the local accounts including the name of the local entity administering the funds, contact information for the entity administering the funds, the amounts expected to be available during the program year, the eligible activity type(s) expected to be carried out with the program income, and the national objective(s) served with the funds.

(iv) HUD may monitor the method of distribution as part of its audit and review responsibilities, as provided in 24 CFR 570.493(a)(1), in order to determine compliance with program requirements.

* * * * *

- 4. In § 91.325, revise paragraph (b)(4)(ii) to read as follows:

§ 91.325 Certifications.

* * * * *

- (b) * * *
- (4) * * *

(ii) In the aggregate, not less than 70 percent of the CDBG funds received by the State during a period specified by the State, not to exceed three years, will be used for activities that benefit persons of low and moderate income. The period selected and certified to by the State shall be designated by fiscal year of annual grants, and shall be for one, two, or three consecutive annual grants. (See 24 CFR 570.481 for definition of "CDBG funds"); and

* * * * *

[§ 91.505 Amended]

- 5. In § 91.505, amend paragraph (a)(2) by adding " , reimbursements, or reallocations from HUD" after "including program income".

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

- 6. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

- 7. In § 570.3, revise the definition of "Entitlement amount" and add the definition of "Origin year" in alphabetical order to read as follows:

§ 570.3 Definitions.

* * * * *

Entitlement amount means the amount of funds which a metropolitan city or urban county is entitled to receive under the Entitlement grant program, as determined by formula set forth in section 106 of the Act

* * * * *

Origin year means the specific Federal fiscal year during which the annual grant funds were appropriated.

* * * * *

- 8. In § 570.200, revise paragraph (g) and add paragraph (k) to read as follows:

§ 570.200 General policies.

(g) *Limitation on planning and administrative costs*—(1) *Origin year grant expenditure test*. For origin year 2015 grants and subsequent grants, no more than 20 percent of any origin year grant shall be expended for planning and program administrative costs, as defined in §§ 570.205 and 570.206, respectively. Expenditures of program income for planning and program administrative costs are excluded from this calculation.

(2) *Program year obligation test*. For all grants and recipients subject to

subpart D, the amount of CDBG funds obligated during each program year for planning plus administrative costs, as defined in §§ 570.205 and 570.206, respectively, shall be limited to an amount no greater than 20 percent of the sum of the grant made for that program year (if any) plus the program income received by the recipient and its subrecipients (if any) during that program year. For origin year 2015 grants and subsequent grants, recipients must apply this test consistent with paragraph (g)(1) of this section.

(3) Funds from a grant of any origin year may be used to pay planning and program administrative costs associated with any grant of any origin year.

* * * * *

(k) Any unexpended CDBG origin year grant funds in the United States Treasury account on September 30 of the fifth Federal fiscal year after the end of the origin year grant's period of availability for obligation by HUD will be canceled. HUD may require an earlier expenditure and draw down deadline under a grant agreement.

[§ 570.201 Amended]

- 9. Amend § 570.201 as follows:
 - a. In paragraph (e)(1), add "nonentitlement CDBG grants in Hawaii, and for recipients of insular area funds under section 106 of the Act," following "subpart D of this part," both times such language appears; and
 - b. In paragraph (e)(2), remove "Federal fiscal year" and add in its place "origin year".

[§ 570.206 Amended]

- 10. Amend § 570.206 as follows:
 - a. In the introductory text, add "program" after "reasonable"; and
 - b. In paragraph (a)(1) introductory text, remove "(or the grant period for grants under subpart F)".

[§ 570.410 Amended]

- 11. Amend § 570.410 as follows:
 - a. In paragraph (c)(2)(ii), remove "federal fiscal year" and add in its place "origin year"; and
 - b. In paragraph (c)(2)(iii), remove "(e)(3)" and add in its place "(e)(2)", and remove "federal fiscal year" and add in its place "origin year".
- 12. In § 570.480, add paragraph (h) to read as follows:

§ 570.480 General.

* * * * *

(h) Any unexpended CDBG origin year grant funds in the United States Treasury account on September 30 of the fifth Federal fiscal year after the end of the origin year grant's period of

availability for obligation by HUD will be canceled. HUD may require an earlier expenditure and draw down deadline under a grant agreement.

■ 13. In § 570.481, revise paragraph (a)(2) and add paragraph (a)(3) to read as follows:

§ 570.481 Definitions.

(a) * * *

(2) *CDBG funds* means Community Development Block Grant funds, in the form of grants under this subpart including any reimbursements, program income, and loans guaranteed under section 108 of the Act.

(3) *Origin year* means the specific Federal fiscal year during which the annual grant funds were appropriated.

* * * * *

■ 14. In § 570.485, add paragraph (d) to read as follows:

§ 570.485 Making of grants.

* * * * *

(d) *Specific conditions*.—HUD may impose additional specific award conditions on States in accordance with 2 CFR 200.207.

■ 15. Amend § 570.489 as follows:

■ a. Capitalize the words “state” and “state’s” each time they appear; and
 ■ b. In § 570.489, revise paragraphs (a)(1)(i), (ii), (iii), and (v) and (a)(2) and (3), paragraphs (e)(3) introductory text, (e)(3)(i) and (ii), and paragraph (g) and add paragraph (o) to read as follows:

§ 570.489 Program administrative requirements.

(a) *Administrative and planning costs*.—(1) *State administrative and technical assistance costs*. (i) The State is responsible for the administration of all CDBG funds. The State may use CDBG funds not to exceed \$100,000, plus 50 percent of administrative expenses incurred in excess of \$100,000. Amounts of CDBG funds used to pay administrative expenses in excess of \$100,000 shall not, subject to paragraph (a)(1)(iii) of this section, exceed the sum of 3 percent of the State’s annual grant; 3 percent of program income received by units of general local government during each program year, regardless of the origin year in which the State grant funds that generate the program income were appropriated (whether retained by units of general local government or paid to the State); and 3 percent of funds reallocated by HUD to the State.

(ii) To pay the costs of providing technical assistance to local governments and nonprofit program recipients, a State may, subject to paragraph (a)(1)(iii) of this section, use CDBG funds received on or after January

23, 2004, in an amount not to exceed the sum of 3 percent of its annual grant; 3 percent of program income received by units of general local government during each program year, regardless of the origin year in which the State grant funds that generate the program income were appropriated (whether retained by units of general local government or paid to the State); and 3 percent of funds reallocated by HUD to the State during each program year.

(iii) The amount of CDBG funds used to pay the sum of administrative costs in excess of \$100,000 paid pursuant to paragraph (a)(1)(i) of this section and technical assistance costs paid pursuant to paragraph (a)(1)(ii) of this section must not exceed the sum of 3 percent of the State’s annual grant; 3 percent of program income received by units of general local government during each program year, regardless of the origin year in which the State grant funds that generate the program income were appropriated (whether retained by the unit of general local government or paid to the State); and 3 percent of funds reallocated by HUD to the state.

* * * * *

(v) In regard to its administrative costs, for grants before origin year 2015, the State has the option of selecting its approach for demonstrating compliance with the requirements of paragraph (a)(1) of this section. For grants beginning with origin year 2015 grants and subsequent grants, the State must use the approach in paragraph (a)(1)(v)(A) of this section. Any State whose matching cost contributions toward State administrative expense matching requirements are in arrears must bring matching cost contributions up to the level of CDBG funds expended for such costs. A State grant may not be closed out if the State’s matching cost contribution is not at least equal to the amount of CDBG funds in excess of \$100,000 expended for administration. The two approaches for demonstrating compliance with this paragraph (a)(1) are:

(A) *Year-to-year tracking and limitation on drawdown of funds*. The State will calculate the maximum allowable amount of CDBG funds that may be used for State administrative expenses from the sum of each origin year grant, program income received during that associated program year and reallocations by HUD to the State during that associated program year. The State will draw down amounts of those funds only upon its own expenditure of an equal or greater amount of matching funds from its own resources after the expenditure of the initial \$100,000 for

State administrative expenses. The State will be considered to be in compliance with the applicable requirements if the actual amount of CDBG funds spent on State administrative expenses does not exceed the maximum allowable amount, and if the amount of matching funds that the state has expended for that grant year is equal to or greater than the amount of CDBG funds in excess of \$100,000 spent during that same grant year. Under this approach, the State must demonstrate that it has paid from its own funds at least 50 percent of its administrative expenses in excess of \$100,000 by the closeout of each grant.

(B) *Cumulative accounting of administrative costs incurred by the State since its assumption of the CDBG program for grants before origin year 2015*. Under this approach, the State will identify, for each grant it has received, the CDBG funds eligible to be used for State administrative expenses, as well as the minimum amount of matching funds that the State is required to contribute. The amounts will then be aggregated for all grants received. The State must keep records demonstrating the actual amount of CDBG funds from each grant received that was used for State administrative expenses, as well as matching amounts that were contributed by the State. The State will be considered to be in compliance with the applicable requirements if the aggregate of the actual amounts of CDBG funds spent on State administrative expenses does not exceed the aggregate maximum allowable amount and if the aggregate amount of matching funds that the State has expended is equal to or greater than the aggregate amount of CDBG funds in excess of \$100,000 (for each annual grant within the subject period) spent on administrative expenses during its 3- to 5-year Consolidated Planning period. If the State grant for any grant year within the 3- to 5-year period has been closed out, the aggregate amount of CDBG funds spent on State administrative expenses, the aggregate maximum allowable amount, the aggregate matching funds expended, and the aggregate amount of CDBG funds in excess of \$100,000 (for each annual grant within the subject period) will be reduced by amounts attributable to the grant year for which the State grant has been closed out.

(2) The State may not charge fees of any entity for processing or considering any application for CDBG funds, or for carrying out its responsibilities under this subpart.

(3)(i) Administrative costs are those described at § 570.489(a)(1) for states and, for units of general local

government, are those described at sections 105(a)(12) and (a)(13) of the Act.

(ii) For grants before origin year 2015, the combined expenditures by the State and its funded units of general local government for planning, management, and administrative costs shall not exceed 20 percent of the aggregate amount of the origin year grant, any origin year grant funds reallocated by HUD to the State, and the amount of any program income received during the program year.

(iii) For origin year 2015 grants and subsequent grants, no more than 20 percent of any annual grant (excluding program income) shall be expended by the State and its funded units of general local government for planning, management, and administrative costs. In addition, the combined expenditures by the States and its unit of general local government for planning, management, and administrative costs shall not exceed 20 percent of any origin year grant funds reallocated by HUD to the State.

(iv) Funds from a grant of any origin year may be used to pay planning and program administrative costs associated with any grant of any origin year.

* * * * *

(e) * * *

(3) The State may permit the unit of general local government which receives or will receive program income to retain it, subject to the requirements of paragraph (e)(3)(ii) of this section, or may require the unit of general local government to pay the program income to the State. The State, however, must permit the unit of general local government to retain the program income if it will be used to continue the activity from which it was derived. The State will determine when an activity is being continued.

(i) *Program income paid to the State.* Except as described in paragraph (e)(3)(ii)(A) of this section, the State may require the unit of general local government that receives or will receive program income to return the program income to the State. Program income that is paid to the State is treated as additional CDBG funds subject to the requirements of this subpart. Except for program income retained and used by the State for administrative costs or technical assistance under paragraph (a) of this section, program income paid to the State must be distributed to units of general local government in accordance with the method of distribution in the action plan under 24 CFR 91.320(k)(1)(i) that is in effect at the time the program income is distributed. To the maximum

extent feasible, the State must distribute program income before it makes additional withdrawals from the United States Treasury, except as provided in paragraph (f) of this section.

(ii) *Program income retained by a unit of general local government.* A State may permit a unit of general local government that receives or will receive program income to retain it. Alternatively, a State may require that the unit of general local government pay any such income to the State unless the exception in paragraph (e)(3)(ii)(A) of this section applies.

(A) A State must permit the unit of general local government to retain the program income if the program income will be used to continue the activity from which it was derived. A State will determine when an activity is being continued. In making such a determination, a State may consider whether the unit of general local government is or will be unable to comply with the requirements of paragraph (e)(3)(ii)(B) of this section or other requirements of this part, and the extent to which the program income is unlikely to be applied to continue the activity within the reasonably near future. When a State determines that the program income will be applied to continue the activity from which it was derived, but the amount of program income held by the unit of general local government exceeds projected cash needs for the reasonably near future, the State may require the local government to return all or part of the program income to the State until such time as it is needed by the unit of general local government. When a State determines that a unit of local government is not likely to apply any significant amount of program income to continue the activity within a reasonable amount of time, or that it is not likely to apply the program income in accordance with applicable requirements, the State may require the unit of general local government to return all of the program income to the State for disbursement to other units of local government. A State that intends to require units of general local government to return program income in accordance with this paragraph must describe its approach in the State's action plan required under 24 CFR 91.320 of this title or in a substantial amendment if the State intends to implement this option after the action plan is submitted to and approved by HUD.

(B) Program income that is received and retained by the unit of general local government is treated as additional CDBG funds and is subject to all applicable requirements of this subpart,

regardless of whether the activity that generated the program income has been closed out. If the grant between the State and the unit of general local government that generated the program income is still open when it is generated, program income permitted to be retained will be considered part of the unit of general local government's grant that generated the program income. If the grant between the State and the unit of general local government is closed out, program income permitted to be retained will be considered to be part of the unit of general local government's most recently awarded open grant. If the unit of general local government has no open grants with the State, the program income retained by the unit of general local government will be counted as part of the State's program year in which the program income was received. A State must employ one or more of the following methods to ensure that units of general local government comply with applicable program income requirements:

(1) Maintaining contractual relationships with units of general local government for the duration of the existence of the program income;

(2) Closing out the underlying activity, but requiring as a condition of closeout that the unit of general local government obtain advance State approval of either a unit of general local government's plan for the use of program income or of each use of program income by grant recipients via regularly occurring reports and requests for approval;

(3) Closing out the underlying activity, but requiring as a condition of closeout that the unit of general local government report to the State when new program income is received; or

(4) With prior HUD approval, other approaches that demonstrate that the State will ensure compliance with the requirements of this subpart by units of general local government.

* * * * *

(g) *Procurement.* When procuring property or services to be paid for in whole or in part with CDBG funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs

methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by § 570.489(h).) The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations. The State shall make subrecipient and contractor determinations in accordance with the standards in 2 CFR 200.330.

* * * * *

(o) *Grant Closeout*.—HUD will close grants to States in accordance with the grant closeout requirements of 2 CFR 200.343.

[§ 570.503 Amended]

- 16. In § 570.503, amend paragraph (b) introductory text by removing the second occurrence of the word “following”.
- 17. Amend § 570.506 as follows:
 - a. In paragraph (d), add “§ 570.503(b)(7) or” before “§ 570.505”; and
 - b. Revise paragraph (h).
The revision reads as follows:

§ 570.506 Records to be maintained.

* * * * *

(h) Financial records, in accordance with the applicable requirements listed in § 570.502, including source documentation for entities not subject to 2 CFR part 200. Grantees shall maintain evidence to support how the CDBG funds provided to such entities are expended. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project architect), and/or other documentation appropriate to the nature of the activity. Grantee records pertaining to obligations, expenditures, and drawdowns must be able to relate financial transactions to either a specific origin year grant or to program income received during a specific program year.

* * * * *

- 18. Amend § 570.509 as follows:
 - a. Revise paragraph (a);
 - b. Remove paragraph (b)(1) and redesignate paragraphs (b)(2) through (4) as paragraphs (b)(1) through (3), respectively;
 - c. In newly redesignated paragraph (b)(2), add a sentence at the end;
 - d. In newly redesignated paragraph (b)(3), remove “24 CFR part 44” and add

in its place “HUD regulations implementing the Single Audit Act requirements at 2 CFR part 200”;
 ■ e. Remove paragraph (c)(3) and redesignate paragraphs (c)(4) and (5) as paragraphs (c)(3) and (4), respectively; and
 ■ f. Revise newly redesignated paragraph (c)(3).

The revisions and additions read as follows:

§ 570.509 Grant closeout procedures.

(a) *Criteria for closeout*. HUD may make grant closeout determinations for individual grants or multiple grants simultaneously. A grant will be closed out when HUD determines, in consultation with the recipient, that the following criteria have been met:

(1) All costs to be paid with CDBG funds from a given origin year’s grant have been expended and drawn down, with the exception of closeout costs (e.g., audit costs) and costs resulting from contingent liabilities described in the closeout agreement pursuant to paragraph (c) of this section. Contingent liabilities include, but are not limited to, third-party claims against the recipient, as well as related administrative costs.

(2) All activities for which funds were expended from the origin year grant are physically completed, are eligible, have met a national objective under § 570.208, and the grantee has reported on all accomplishments resulting from the activity.

(3) A final performance and expenditure report for completed activities has been submitted to HUD pursuant to 24 CFR 91.520, and HUD has determined the plan is satisfactory.

(4) All program income received by the grantee during the grantee program year associated with the origin year grant has been expended, or identified in a more recent program year’s Action Plan, pursuant to 24 CFR 91.220(l).

(5) For origin year 2015 grants and subsequent grants, the grantee has expended no more than 20 percent of the origin year grant for planning and program administrative costs, under § 570.200(g)(1).

(6) Other responsibilities of the recipient under the grant agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further Federal interest in keeping the grant agreement open for the purpose of securing performance.

(b) * * *

(2) * * * Any funds which have exceeded the statutory time limit on the use of funds will be recaptured by the U.S. Treasury pursuant to 24 CFR 570.200(k).

* * * * *

(c) * * *

(3) Description of the recipient’s responsibility after closeout for:

(i) Compliance with all program requirements, certifications, and assurances in using any remaining CDBG funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with CDBG funds in accordance with the principles described in §§ 570.503(b)(7) and 570.505;

(iii) Compliance with requirements governing future program income or receivables generated from activities funded from the origin year grant, as described in § 570.504(b)(4) and (5);

(iv) Ensuring that flood insurance coverage for affected property owners is maintained for the mandatory period; and

* * * * *

- 19. In § 570.513, amend paragraph (b)(7) by adding after the first sentence a new second sentence to read as follows:

§ 570.513 Lump sum drawdown for financing of property rehabilitation activities.

* * * * *

(b) * * *

(7) * * * Any program income which will be governed by a new agreement must be identified in the current program year Action Plan, pursuant to 24 CFR 91.220(l). * * *

* * * * *

Dated: September 18, 2015.
Harriet Tregoning,
Principal Deputy Assistant, Secretary for Community Planning and Development.
 Approved on: October 13, 2015.
Nani A. Coloretti,
Deputy Secretary.
 [FR Doc. 2015–28700 Filed 11–10–15; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100.701

[Docket No. USCG–2015–0955] Special Local

Regulations; Recurring Marine Events in the Seventh Coast Guard District

AGENCY: Coast Guard, DHS.
ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the regulation pertaining to the Savannah Harbor Boat Parade of Lights

and Fireworks taking place on November 28, 2015. This action is necessary to ensure safety of life on navigable waters of the United States during the Savannah Harbor Boat Parade of Lights and Fireworks. During the enforcement period, the special local regulation establishes a regulated area which will prohibit all people and vessels from entering. No person or vessel may enter, transit through, anchor in, or remain within the area without permission of the Captain of the Port Savannah, or a designated representative.

DATES: The regulation in 33 CFR 100.701 Table 1 will be enforced from 5 p.m. to 10 p.m. on November 28, 2015.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email MST1 Clifton Hendry, Marine Safety Unit Savannah Office of Waterways Management, Coast Guard; telephone 912-652-4353, extension 243, or email Clifton.R.Hendry@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the Savannah Parade of Lights and Fireworks in 33 CFR 100.701 Table 1 from 5 p.m. to 10 p.m. on November 28, 2015.

Under the provisions of 33 CFR 100.701 no person or vessel may enter the regulated area, unless they receive permission to do so from the Captain of the Port Savannah, or a designated representative. This temporary rule creates a regulated area that will encompass the entire Savannah River in Savannah, GA beginning at the Talmadge Bridge near River Street, coordinates 32°05'20" N., 081°05'56.3" W., and proceeding down river to a line drawn at 146 degrees true from day board 62, approximate coordinates are: 32°04'48.7" N., 081°04'47.9" W.

Spectator vessels may safely transit outside the regulated area, but may not anchor, block, loiter in, or impede the transit of festival participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.701 and 5 U.S.C. 552(a). The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Dated: October 26, 2015.

A.M. Beach,

Commander, U.S. Coast Guard, Captain of the Port, Savannah.

[FR Doc. 2015-28792 Filed 11-10-15; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2009-0648; FRL-9936-86-Region 6]

Approval and Promulgation of Implementation Plans; New Mexico; Nonattainment New Source Review Permitting State Implementation Plan Revisions for the City of Albuquerque-Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the New Mexico State Implementation Plan (SIP) for the City of Albuquerque-Bernalillo County. These revisions provide updates to the City of Albuquerque-Bernalillo County major Nonattainment New Source Review (NNSR) permit program. The EPA is proposing this action under section 110 and part D of the Clean Air Act (CAA or the Act).

DATES: This final rule is effective on December 14, 2015.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2009-0648. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Ms. Erica Le Doux, (214) 665-7265, ledoux.eric@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

I. Background

The background for today's action is discussed in detail in our August 27, 2015 proposal (80 FR 52003). In that notice, we proposed to approve updates to the New Mexico SIP for the City of Albuquerque-Bernalillo County Nonattainment New Source Review (NNSR) permitting program at 20.11.60 NMAC as submitted on August 16, 2010 and July 26, 2013. These revisions were submitted to address the following federal requirements for NNSR:

- Implementation of the NSR Program for PM_{2.5} (73 FR 28321);
- PSD for PM_{2.5}-Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC) (75 FR 64864);
- Implementation of the 8-hour Ozone (O₃) NAAQS-Phase; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to NSR and PSD as They Apply to Carbon Monoxide (CO), PM and O₃ NAAQS (70 FR 71612);
- PSD and NNSR: Reasonable Possibility in Recordkeeping (72 FR 72607); and PSD and NNSR: Reconsideration of Inclusion of Fugitive Rule (76 FR 17548).

We did not receive any comments regarding our proposal.

II. Final Action

We are approving severable portions of SIP submittals for the New Mexico SIP for the City of Albuquerque-Bernalillo County NNSR permitting program submitted on August 16, 2010, and July 26, 2013. The EPA has determined that the submitted rules were adopted and submitted in accordance with the CAA and are consistent with our regulations and policies regarding NNSR permitting. Therefore, we are taking final action under section 110 and part D of the CAA to approve the following as revisions to the New Mexico SIP for the City of Albuquerque-Bernalillo County:

- Revisions to 20.11.60.1 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;
- Revisions to 20.11.60.2 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;
- Revisions to 20.11.60.6 NMAC as adopted on July 14, 2010 and submitted August 16, 2010, and adopted on April 10, 2013 and submitted on July 26, 2013;
- Revisions to 20.11.60.7 NMAC as adopted on July 14, 2010 and submitted August 16, 2010, and adopted on April 10, 2013 and submitted on July 26, 2013;
- Revisions to 20.11.60.12 NMAC as adopted on July 14, 2010 and submitted

August 16, 2010, and adopted on April 10, 2013 and submitted on July 26, 2013;

- Revisions to 20.11.60.13 NMAC as adopted on July 14, 2010 and submitted August 16, 2010, and adopted on April 10, 2013 and submitted on July 26, 2013;

- New 20.11.60.14 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;

- New 20.11.60.15 NMAC as adopted July 14, 2010 and submitted August 16, 2010, and revisions adopted on April 10, 2013 and submitted on July 26, 2013;

- New 20.11.60.16 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;

- Revisions to 20.11.60.17 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;

- Revisions to 20.11.60.18 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;

- New 20.11.60.19 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;

- New 20.11.60.20 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;

- Revisions to 20.11.60.21 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;

- Revisions to 20.11.60.22 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;

- Revisions to 20.11.60.23 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;

- Revisions to 20.11.60.24 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;

- Revisions to 20.11.60.25 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;

- Revisions to 20.11.60.26 NMAC as adopted on July 14, 2010 and submitted August 16, 2010; and

- Revisions to 20.11.60.27 NMAC as adopted on July 14, 2010 and submitted August 16, 2010.

The EPA finds that the August 16, 2010 and July 26, 2013, submittals together address all required NNSR elements for the implementation of the 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS. We note that the City of Albuquerque-Bernalillo County NNSR program does not include regulation of VOCs and ammonia as PM_{2.5} precursors. However, section 189(e) of the Act requires regulation of PM_{2.5} precursors that significantly contribute to PM_{2.5} levels “which exceed the standard in the area” and PM_{2.5} levels in the City of Albuquerque-Bernalillo County do not currently exceed the standard. In the event that an

area is designated nonattainment for the 2012 PM_{2.5} NAAQS or any other future PM_{2.5} NAAQS, New Mexico for the City of Albuquerque-Bernalillo County will have a deadline under section 189(a)(2) of the CAA to make a submission addressing the statutory requirements as to that area, including the requirements in section 189(e) that apply to the regulation of PM_{2.5} precursors.

III. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the New Mexico for the City of Albuquerque-Bernalillo County regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the EPA Region 6 office.

IV. Statutory and Executive Order Reviews

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 11, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 29, 2015.
Ron Curry,
Regional Administrator, Region 6.
 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—New Mexico

■ 2. In § 52.1620(c) the second table titled “EPA Approved Albuquerque/Bernalillo County, NM Regulations” is amended by revising the entry for “Part 60 (20.11.60)” to read as follows:

§ 52.1620 Identification of plan.

* * * * *
 (c) * * *

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Board				
Part 60 (20.11.60)	Permitting in Nonattainment Areas.	4/10/2013	11/12/2015 [Insert Federal Register citation].	

* * * * *
 [FR Doc. 2015–28648 Filed 11–10–15; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0289; FRL–9936–65–Region 9]

Approval of California Air Plan Revisions, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). This revision concerns the District’s

reasonably available control technology (RACT) requirements under the 1997 8-hour National Ambient Air Quality Standards (NAAQS) for ozone. This submitted SIP revision also contains ICAPCD’s negative declarations for certain volatile organic compound (VOC) source categories. We are approving this document under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on December 14, 2015.

ADDRESSES: The EPA has established docket number EPA–R09–OAR–2015–0289 for this action. Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps,

multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: James Shears, EPA Region IX, (213) 244–1810, shears.james@epa.gov.

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

Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

I. Proposed Action

On September 1, 2015 (80 FR 52710), the EPA proposed to approve the following document into the California SIP.

Local agency	Document	Adopted	Submitted
ICAPCD	Final 2009 Reasonably Available Control Technology State Implementation Plan (“2009 RACT SIP”).	07/13/10	12/21/10

ICAPCD’s submittal also included the following negative declarations which the District certified that it had no

sources subject to the control techniques guidelines (CTG) documents.

CTG Source category	CTG Reference document
Aerospace	EPA-453/R-97-004, Aerospace CTG and MACT.
Automobile and Light-duty Trucks, Surface Coating of	EPA-450/2-77-008, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks.
Cans and Coils, Surface Coating of	EPA-453/R-08-006, Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings.
Fiberglass Boat Manufacturing	EPA-450/2-77-008, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks.
Flat Wood Paneling, Surface Coating of	EPA-453/R-08-004, Controls Techniques Guidelines for Fiberglass Boat Manufacturing.
Flexible Packing Printing	EPA-450/2-78-032, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VII: Factory Surface Coating of Flat Wood Paneling.
Graphic Arts—Rotogravure and Flexography	EPA-453/R-06-004, Control Techniques Guidelines for Flat Wood Paneling Coatings.
Large Appliances, Surface Coating of	EPA-453/R-06-003, Control Techniques Guidelines for Flexible Package Printing.
Large Petroleum Dry Cleaners	EPA-450/2-78-033, Control of Volatile Organic Emissions from Existing Stationary Sources, Volume III: Graphic Arts—Rotogravure and Flexography.
Offset Lithographic Printing and Letterpress Printing	EPA-450/2-77-034, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume V: Surface Coating of Large Appliances.
Magnet Wire, Surface Coating for Insulation of	EPA-453/R-07-004, Control Techniques Guidelines for Large Appliance Coatings.
Metal Furniture Coatings	EPA-450/3-82-009, Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners.
Miscellaneous Metal and Plastic Parts Coatings	EPA-453/R-06-002, Control Techniques Guidelines for Offset Lithographic Printing and Letterpress Printing.
Miscellaneous Metal Parts and Products, Surface Coating of	EPA-450/2-77-033, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume IV: Surface Coating of Insulation of Magnet Wire.
Miscellaneous Industrial Adhesives	EPA-450/2-77-032, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume III: Surface Coating of Metal Furniture.
Natural Gas/Gasoline Processing Plants Equipment Leaks	EPA-453/R-07-005, Control Techniques Guidelines for Metal Furniture Coatings.
Paper, Film and Foil Coatings	EPA-453/R-08-003, Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings.
Petroleum Refineries	EPA-450/2-78-015, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume IV: Surface Coating of Miscellaneous Metal Parts and Products.
Pharmaceutical Products	EPA-453/R-08-005, Control Techniques Guidelines for Miscellaneous Industrial Adhesives.
Pneumatic Rubber Tires, Manufacture of	EPA-450/2-83-007, Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants.
Polyester Resin	EPA-453R-07-003, Control Techniques Guidelines for Paper, Film and Foil Coatings.
Shipbuilding/Repair	EPA-450/2-77-025, Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds.
Synthetic Organic Chemical	EPA-450/2-78-036, Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment.
Wood Furniture	EPA-450/2-78-029, Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products.
	EPA-450/2-78-030, Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires.
	EPA-450/3-83-008, Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins.
	EPA-450/3-83-006, Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.
	EPA-453/R-94-032, Shipbuilding/Repair.
	EPA-450/3-84-015, Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry.
	EPA-450/4-91-031, Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry.
	EPA-453/R-96-007, Wood Furniture.

We proposed to approve ICAPCD's 2009 RACT SIP and negative declarations because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the submitted document and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this document, including the negative declarations, into the California SIP.

IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects using practicable, and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 11, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for

the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 19, 2015.

Jared Blumenfeld,
Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

- 2. Section 52.220 is amended by adding reserved paragraph (c)(463) and adding paragraph (c)(464) to read as follows:

§ 52.220 Identification of plan.

* * * * *
(c) * * *
(463) [Reserved]
(464) The following plan was submitted on December 21, 2010 by the Governor's designee.

- (i) [Reserved]
- (ii) Additional Material.
(A) Imperial County Air Pollution Control District.
(1) Final 2009 Reasonably Available Control Technology State Implementation Plan ("2009 RACT SIP") as adopted on July 13, 2010.

- 3. Section 52.222 is amended by adding paragraph (a)(12) to read as follows:

§ 52.222 Negative declarations.

(a) * * *
(12) Imperial County Air Pollution Control District.
(i)

CTG Source category	Negative declaration CTG reference document
Aerospace	EPA-453/R-97-004, Aerospace CTG and MACT.

CTG Source category	Negative declaration CTG reference document
Automobile and Light-duty Trucks, Surface Coating of	EPA-450/2-77-008, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks. EPA-453/R-08-006, Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings.
Cans and Coils, Surface Coating of	EPA-450/2-77-008, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks.
Fiberglass Boat Manufacturing	EPA-453/R-08-004, Controls Techniques Guidelines for Fiberglass Boat Manufacturing.
Flat Wood Paneling, Surface Coating of	EPA-450/2-78-032, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VII: Factory Surface Coating of Flat Wood Paneling. EPA-453/R-06-004, Control Techniques Guidelines for Flat Wood Paneling Coatings.
Flexible Packing Printing	EPA-453/R-06-003, Control Techniques Guidelines for Flexible Package Printing.
Graphic Arts—Rotogravure and Flexography	EPA-450/2-78-033, Control of Volatile Organic Emissions from Existing Stationary Sources, Volume III: Graphic Arts—Rotogravure and Flexography.
Large Appliances, Surface Coating of	EPA-450/2-77-034, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume V: Surface Coating of Large Appliances. EPA-453/R-07-004, Control Techniques Guidelines for Large Appliance Coatings.
Large Petroleum Dry Cleaners	EPA-450/3-82-009, Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners.
Offset Lithographic Printing and Letterpress Printing	EPA-453/R-06-002, Control Techniques Guidelines for Offset Lithographic Printing and Letterpress Printing.
Magnet Wire, Surface Coating for Insulation of	EPA-450/2-77-033, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume IV: Surface Coating of Insulation of Magnet Wire.
Metal Furniture Coatings	EPA-450/2-77-032, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume III: Surface Coating of Metal Furniture. EPA-453/R-07-005, Control Techniques Guidelines for Metal Furniture Coatings.
Miscellaneous Metal and Plastic Parts Coatings	EPA-453/R-08-003, Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings.
Miscellaneous Metal Parts and Products, Surface Coating of	EPA-450/2-78-015, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume IV: Surface Coating of Miscellaneous Metal Parts and Products.
Miscellaneous Industrial Adhesives	EPA-453/R-08-005, Control Techniques Guidelines for Miscellaneous Industrial Adhesives.
Natural Gas/Gasoline Processing Plants Equipment Leaks	EPA-450/2-83-007, Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants.
Paper, Film and Foil Coatings	EPA-453/R-07-003, Control Techniques Guidelines for Paper, Film and Foil Coatings.
Petroleum Refineries	EPA-450/2-77-025, Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds. EPA-450/2-78-036, Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment.
Pharmaceutical Products	EPA-450/2-78-029, Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products.
Pneumatic Rubber Tires, Manufacture of	EPA-450/2-78-030, Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires.
Polyester Resin	EPA-450/3-83-008, Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins. EPA-450/3-83-006, Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.
Shipbuilding/Repair	EPA-453/R-94-032, Shipbuilding/Repair.
Synthetic Organic Chemical	EPA-450/3-84-015, Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry. EPA-450/4-91-031, Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry.
Wood Furniture	EPA-453/R-96-007, Wood Furniture.

(ii) Submitted on December 21, 2010 and adopted on July 13, 2010.

* * * * *

[FR Doc. 2015-28756 Filed 11-10-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0257; FRL-9934-89-Region 9]

Approval of Air Plans; California; Multiple Districts; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action under section 110 of the Clean Air Act (CAA or Act) to approve a State Implementation Plan (SIP) revision for five California air districts. The State of California (State) is required by the CAA to adopt and implement a SIP-approved Prevention of Significant Deterioration (PSD) permit program. This SIP revision incorporates PSD rules for five local California air districts into the California SIP to establish a PSD permit program for pre-construction review of certain new and modified major stationary sources in attainment and unclassifiable areas located within these districts. The local air districts with PSD rules that are the subject of this action are the Feather River Air Quality Management District (Feather River or FRAQMD), Great Basin Unified Air Pollution Control District (Great Basin or GBUAPCD), Butte County Air Quality Management District (Butte or BCAQMD), Santa Barbara County Air Pollution Control District (Santa Barbara or SBAPCD), and San Luis Obispo County Air Pollution Control District (San Luis Obispo or SLOAPCD)—collectively, the Districts.

DATES: This rule is effective on December 14, 2015.

ADDRESSES: The EPA has established docket number EPA-R09-OAR-2015-

0257 for this action. Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. Some docket materials, however, may be publicly available only at the hard copy location (e.g., voluminous records, maps, copyrighted material), and some may not be publicly available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. **FOR FURTHER INFORMATION CONTACT:** Lisa Beckham, EPA Region IX, (415) 972-3811, beckham.lisa@epa.gov.

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

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- I. Background
- II. The EPA’s Evaluation of the SIP Revision
 - A. Summary of the EPA’s Proposed Action
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 - C. What action is the EPA finalizing?
- III. The EPA’s Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background

Section 110(a) of the CAA requires states to adopt and submit regulations for the implementation, maintenance and enforcement of the primary and secondary NAAQS. Specifically, sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(f) of the Act require such state plans to meet the applicable requirements of section 165 relating to a pre-construction permit program for the prevention of significant deterioration of air quality and visibility protection. The rules reviewed for this action are intended to implement a pre-construction PSD permit program as required by section 165 of the CAA for certain new and modified major stationary sources located in attainment and unclassifiable areas. Because the State does not currently have a SIP-approved PSD program within the Districts, the EPA is currently the PSD

permitting authority within these Districts under a Federal Implementation Plan (FIP). Approval of the Districts’ PSD rules into the SIP will transfer PSD permitting authority from the EPA to the Districts. The EPA will then assume the role of overseeing the Districts’ PSD permitting programs, as intended by the CAA.

For a more detailed discussion of the District’s rules, please refer to our proposed approval. See 80 FR 44001 (July 24, 2015).

II. The EPA’s Evaluation of the SIP Revision

A. Summary of the EPA’s Proposed Action

On July 24, 2015 (80 FR 44001), the EPA proposed approval of the Districts’ PSD rules into the California SIP. We proposed to approve these rules because we determined that they satisfied the applicable CAA requirements. Our proposed rule and related Technical Support document (TSD) contain more information about the basis for this rulemaking and our evaluation of the pertinent State SIP revision submittals.

B. Public Comments and the EPA’s Responses

EPA’s proposed approval action for this SIP revision provided a 30-day public comment period. We did not receive any comments on our proposed action.

C. What action is the EPA finalizing?

The EPA is finalizing a SIP revision for each District’s portion of the California SIP, consistent with our proposed approval action. The SIP revision will be codified in 40 CFR 52.220 by incorporating by reference the rules listed in Table 1. On June 1, 2015, the California Air Resources Board (CARB) requested the withdrawal from its earlier SIP submittals of the portion of each District PSD rule that incorporates by reference a particular federal PSD rule provision—40 CFR 52.21(b)(49)(v). As such, our approval of these local District rules does not include the rules’ incorporation by reference of 40 CFR 52.21(b)(49)(v).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
FRAQMD	10.10	Prevention of Significant Deterioration	8/1/2011	4/22/2013
GBUAPCD	221	Prevention of Significant Deterioration (PSD) Permit Requirements for New Major Facilities or Major Modifications in Attainment or Unclassifiable Areas.	9/5/2012	2/6/2013
BCAQMD	1107	Prevention of Significant Deterioration (PSD) Permits	6/28/2012	2/6/2013
SBAPCD	810	Federal Prevention of Significant Deterioration (PSD)	6/20/2013	2/10/2014

TABLE 1—SUBMITTED RULES—Continued

Local agency	Rule No.	Rule title	Adopted	Submitted
SLOAPCD	220	Federal Prevention of Significant Deterioration	1/22/2014	5/13/2014

In addition, letters from the Districts to the EPA providing certain clarifications regarding their PSD rules and the requirements of 40 CFR 51.166 will be included as additional material in 40 CFR 52.220. We are also revising 40 CFR 52.270 to reflect that upon the effective date of this final rule, each District will have a SIP-approved PSD program and will no longer be subject to the FIP for the PSD program. This SIP revision provides a federally approved and enforceable mechanism for each of the Districts to issue pre-construction PSD permits for certain new and modified major stationary sources subject to PSD review within the relevant District.

As discussed in the EPA’s proposal, with the exception of San Luis Obispo, the Districts requested approval to exercise their authority to administer the PSD program with respect to those sources located in the relevant District that have existing PSD permits issued by the EPA, including authority to conduct general administration of these existing permits, authority to process and issue any and all subsequent PSD permit actions relating to such permits (e.g., modifications, amendments, or revisions of any nature), and authority to enforce such permits. Pursuant to the criteria in section 110(a)(2)(E)(i) of the CAA, we have determined that the four Districts have the authority, personnel, and funding to implement the PSD program within the relevant District for existing EPA-issued permits and therefore are transferring authority for such permits to the four Districts concurrent with the effective date of the EPA’s approval of the Districts’ PSD program into the SIP. The EPA intends to provide a copy of each such permit to the relevant District.

III. The EPA’s Final Action

The EPA is approving five PSD rules submitted by CARB to establish a PSD permit program for pre-construction review of certain new and modified major stationary sources in attainment or unclassifiable areas. We are approving these rules as a revision to the California SIP pursuant to section 110(k)(3) of the Act. Specifically, we are approving the rules listed in Table 1, except for the portion of each rule that incorporates by reference 40 CFR 52.21(b)(49)(v), which was subsequently

withdrawn from CARB’s request for SIP approval, as explained in more detail in our proposal. See 80 FR at 44003–04. Our determination is based, in part, on the clarifications provided by the Districts related to the implementation of the PSD program, including the clarifications related to Significant Impact Levels (SILs) and the Significant Monitoring Concentrations (SMC) for PM_{2.5}, in letters dated November 13, 2014, November 25, 2014, December 16, 2014, December 18, 2014, April 8, 2015, and April 15, 2015. See 80 FR at 44002–03. We are including these clarification letters as additional material in 40 CFR 52.220.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the rules listed in Table 1, with the exception of certain provisions incorporated into those rules as discussed in Section III. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
 - does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
 - does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller

General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 11, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 9, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(428)(i)(E) and (F), (c)(428)(ii), (c)(429)(i)(D), (c)(429)(ii), (c)(441)(i)(F), (c)(441)(ii), (c)(442)(i)(H), and (c)(442)(ii) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(428) * * *

(i) * * *

(E) Great Basin Unified Air Pollution Control District.

(1) Rule 221, "Prevention of Significant Deterioration (PSD) Permit Requirements for New Major Facilities or Major Modifications in Attainment or

Unclassifiable Areas," except for the incorporation by reference of 40 CFR 52.21(b)(49)(v) into sections C. and D3, adopted on September 5, 2012.

(F) Butte County Air Quality Management District.

(1) Rule 1107, "Prevention of Significant Deterioration (PSD) Permits," except for the incorporation by reference of 40 CFR 52.21(b)(49)(v) into sections 3 and 4.1, adopted on June 28, 2012.

(ii) *Additional materials.*

(A) Great Basin Unified Air Pollution Control District.

(1) Letter dated November 13, 2014 from Theodore D. Schade, Great Basin Unified Air Pollution Control District, to Gerardo Rios, United States Environmental Protection Agency Region 9, regarding clarifications of District Rule 221 and 40 CFR 51.166.

(2) Letter dated April 15, 2015, from Phillip L. Kiddoo, Great Basin Unified Air Pollution Control District, to Gerardo Rios, United States Environmental Protection Agency Region 9, regarding additional clarifications of District Rule 221 and 40 CFR 51.166.

(B) Butte County Air Quality Management District.

(1) Letter dated November 13, 2014, from W. James Wagoner, Butte County Air Quality Management District, to Gerardo Rios, United States Environmental Protection Agency Region 9, regarding clarifications of District Rule 1107 and 40 CFR 51.166.

(2) Letter dated April 8, 2015, from W. James Wagoner, Butte County Air Quality Management District, to Gerardo Rios, United States Environmental Protection Agency Region 9, regarding additional clarifications of District Rule 1107 and 40 CFR 51.166.

(429) * * *

(i) * * *

(D) Feather River Air Quality Management District.

(1) Rule 10.10, "Prevention of Significant Deterioration," except for the incorporation by reference of 40 CFR 52.21(b)(49)(v) into sections B and F.1, adopted on August 1, 2011.

(ii) *Additional materials.*

(A) Feather River Air Quality Management District.

(1) Letter dated December 18, 2014 from Christopher D. Brown, Feather River Air Quality Management District, to Gerardo Rios, United States Environmental Protection Agency Region 9, regarding clarifications of District Rule 10.10 and 40 CFR 51.166.

* * * * *

(441) * * *

(i) * * *

(F) San Luis Obispo County Air Pollution Control District.

(1) Rule 220, "Federal Prevention of Significant Deterioration," except for the incorporation by reference of 40 CFR 52.21(b)(49)(v) into sections B and D.3., amended on January 22, 2014.

(ii) *Additional materials.*

(A) San Luis Obispo County Air Pollution Control District.

(1) Letter dated December 16, 2014 from Larry R. Allen, San Luis Obispo County Air Pollution Control District, to Gerardo Rios, United States Environmental Protection Agency Region 9, regarding clarifications of District Rule 220 and 40 CFR 51.166.

(442) * * *

(i) * * *

(H) Santa Barbara County Air Pollution Control District.

(1) Rule 810, "Federal Prevention of Significant Deterioration (PSD)," except for the incorporation by reference of 40 CFR 52.21(b)(49)(v) into sections B and D.3., amended on June 20, 2013.

(ii) *Additional materials.*

(A) Santa Barbara County Air Pollution Control District.

(1) Letter dated November 25, 2014 from David Van Mullem, Santa Barbara County Air Pollution Control District, to Gerardo Rios, United States Environmental Protection Agency Region 9, regarding clarifications of District Rule 810 and 40 CFR 51.166.

* * * * *

■ 3. Section 52.270 is amended by adding paragraphs (b)(11) through (15) to read as follows:

§ 52.270 Significant deterioration of air quality.

* * * * *

(b) * * *

(11) The PSD program for the Great Basin Unified Air Pollution Control District (GBUAPCD), as incorporated by reference in § 52.220(c)(428), is approved under Part C, Subpart 1, of the Clean Air Act. For PSD permits previously issued by EPA pursuant to § 52.21 to sources located in the GBUAPCD, this approval includes the authority for the GBUAPCD to conduct general administration of these existing permits, authority to process and issue any and all subsequent permit actions relating to such permits, and authority to enforce such permits.

(12) The PSD program for the Butte County Air Quality Management District (BCAQMD), as incorporated by reference in § 52.220(c)(428), is approved under Part C, Subpart 1, of the Clean Air Act. For PSD permits previously issued by EPA pursuant to § 52.21 to sources located in the BCAQMD, this approval includes the

authority for the BCAQMD to conduct general administration of these existing permits, authority to process and issue any and all subsequent permit actions relating to such permits, and authority to enforce such permits.

(13) The PSD program for the Feather River Air Quality Management District (FRAQMD), as incorporated by reference in § 52.220(c)(429), is approved under Part C, Subpart 1, of the Clean Air Act. For PSD permits previously issued by EPA pursuant to § 52.21 to sources located in the FRAQMD, this approval includes the authority for the FRAQMD to conduct general administration of these existing permits, authority to process and issue any and all subsequent permit actions relating to such permits, and authority to enforce such permits.

(14) The PSD program for the San Luis Obispo County Air Pollution Control District (SLOAPCD), as incorporated by reference in § 52.220(c)(441), is approved under Part C, Subpart 1, of the Clean Air Act.

(15) The PSD program for the Santa Barbara County Air Pollution Control District (SBAPCD), as incorporated by reference in § 52.220(c)(442), is approved under Part C, Subpart 1, of the Clean Air Act. For PSD permits previously issued by EPA pursuant to § 52.21 to sources located in the SBAPCD, this approval includes the authority for the SBAPCD to conduct general administration of these existing permits, authority to process and issue any and all subsequent permit actions relating to such permits, and authority to enforce such permits.

[FR Doc. 2015-28624 Filed 11-10-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 97

[FRL-9936-99-OAR]

Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for the 2015 Compliance Year

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of data availability (NODA).

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of emission allowance allocations to certain units under the new unit set-aside (NUSA) provisions of the Cross-State Air Pollution Rule (CSAPR) federal implementation plans (FIPs).

EPA has completed final calculations for the second round of NUSA allowance allocations for the 2015 compliance year of the CSAPR NO_x Ozone Season Trading Program. EPA has posted spreadsheets showing the second-round 2015 NUSA allocations of CSAPR NO_x Ozone Season allowances to new units as well as the allocations to existing units of the remaining CSAPR NO_x Ozone Season allowances not allocated to new units in either round of the 2015 NUSA allocation process. EPA will record the allocated CSAPR NO_x Ozone Season allowances in sources' Allowance Management System (AMS) accounts by November 16, 2015.¹

DATES: November 12, 2015.

FOR FURTHER INFORMATION CONTACT:

Questions concerning this action should be addressed to Robert Miller at (202) 343-9077 or miller.robertl@epa.gov or to Kenon Smith at (202) 343-9164 or smith.kenon@epa.gov.

SUPPLEMENTARY INFORMATION: Under the CSAPR FIPs, a portion of each state budget for each of the four CSAPR trading programs is reserved as a NUSA from which allowances are allocated to eligible units through an annual one- or two-round process. EPA has described the CSAPR NUSA allocation process in three NODAs previously published in the *Federal Register* (80 FR 30988, June 1, 2015; 80 FR 44882, July 28, 2015; 80 FR 55061, September 14, 2015). In the most recent of these previous NODAs, EPA provided notice of preliminary lists of new units eligible for second-round 2015 NUSA allocations of CSAPR NO_x Ozone Season allowances and provided an opportunity for the public to submit objections.

EPA received no substantive objections to the preliminary lists of new units eligible for second-round 2015 NUSA allocations of CSAPR NO_x Ozone Season allowances whose availability was announced in the September 14 NODA. The only written objection that EPA received concerned the format of the data rather than the substance. EPA is therefore making second-round 2015 NUSA allocations of CSAPR NO_x Ozone Season allowances to the new units identified on these lists in accordance with the procedures set forth in 40 CFR 97.512(a)(9) and (12).

As described in the September 14 NODA, any allowances remaining in the

CSAPR NO_x Ozone Season NUSA for a given state and control period after the second round of NUSA allocations to new units are to be allocated to the existing units in the state according to the procedures set forth in 40 CFR 97.512(a)(10) and (12). EPA has determined that CSAPR NO_x Ozone Season allowances do remain in the NUSAs for a number of states following completion of second-round 2015 NUSA allocations; accordingly, EPA is allocating these allowances to existing units. The NUSA allowances are generally allocated to the existing units in proportion to the allocations previously made to the existing units under 40 CFR 97.511(a)(1), adjusted for rounding.

Under 40 CFR 97.512(b)(10), any allowances remaining in the CSAPR NO_x Ozone Season Indian country NUSA for a given state and control period after the second round of Indian country NUSA allocations to new units are added to the NUSA for that state or are made available for allocation by the state pursuant to an approved SIP revision. No new units eligible for allocations of CSAPR NO_x Ozone Season allowances from any 2015 Indian country NUSA have been identified, and no state has an approved SIP revision governing allocation of 2015 CSAPR allowances. The Indian country NUSA allowances are therefore being added to the NUSAs for the respective states and are included in the pools of allowances that are being allocated to existing units under 40 CFR 97.512(10) and (12).

The final unit-by-unit data and allowance allocation calculations are set forth in Excel spreadsheets titled "CSAPR_NUSA_2015_NO_x_OS_2nd_Round_Final_Data_New_Units", and "CSAPR_NUSA_2015_NO_x_OS_2nd_Round_Final_Data_Existing_Units", available on EPA's Web site at <http://www.epa.gov/crossstaterule/actions.html>.

Pursuant to CSAPR's allowance recordation timing requirements, the allocated NUSA allowances will be recorded in sources' AMS accounts by November 16, 2015. EPA notes that an allocation or lack of allocation of allowances to a given unit does not constitute a determination that CSAPR does or does not apply to the unit. EPA also notes that NUSA allocations of CSAPR NO_x Ozone Season allowances are subject to potential correction if a unit to which NUSA allowances have been allocated for a given compliance

¹ Under 40 CFR 97.521(i), the deadline for EPA recordation of these allowances allocated under 40 CFR 97.511 and 97.512 for 2015 is November 15, 2015. However, since November 15, 2015 falls on a Sunday, under 40 CFR 97.507(c), the deadline for EPA recordation of allocations is the next business day, which is Monday, November 16, 2015.

year is not actually an affected unit as of May 1 of the compliance year.²

Authority: 40 CFR 97.511(b).

Dated: November 4, 2015.

Reid P. Harvey,

Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2015-28766 Filed 11-10-15; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

RIN 0648-XE261

Fraser River Sockeye and Pink Salmon Fisheries; Inseason Orders

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

ACTION: Temporary orders; inseason orders.

SUMMARY: NMFS publishes Fraser River salmon inseason orders to regulate treaty and non-treaty (all citizen) commercial salmon fisheries in U.S. waters. The orders were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by NMFS during the 2015 salmon fisheries within the U.S. Fraser River Panel Area. These orders established fishing dates, times, and areas for the gear types of U.S. treaty Indian and all citizen commercial fisheries during the period the Panel exercised jurisdiction over these fisheries.

DATES: The effective dates for the inseason orders are set out in this document under the heading Inseason Orders.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206-526-4323.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631-3644.

Under authority of the Act, Federal regulations at 50 CFR part 300, subpart F, provide a framework for the implementation of certain regulations of

the Commission and inseason orders of the Commission's Fraser River Panel for U.S. sockeye and pink salmon fisheries in the Fraser River Panel Area.

The regulations close the U.S. portion of the Fraser River Panel Area to U.S. sockeye and pink salmon tribal and non-tribal commercial fishing unless opened by Panel orders that are given effect by inseason regulations published by NMFS. During the fishing season, NMFS may issue regulations that establish fishing times and areas consistent with the Commission agreements and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations and are issued by the Regional Administrator, West Coast Region, NMFS. Official notification of these inseason actions is provided by two telephone hotline numbers described at 50 CFR 300.97(b)(1) and in 80 FR 25611 (May 5, 2015). The inseason orders are published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical.

Inseason Orders

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by NMFS during the 2015 fishing season. Each of the following inseason actions was effective upon announcement on telephone hotline numbers as specified at 50 CFR 300.97(b)(1) and in 80 FR 25611 (May 5, 2015); those dates and times are listed herein. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220-22.

Fraser River Panel Order Number 2015-01: Issued 12:15 p.m., July 24, 2015

Treaty Indian Fishery

Areas 4B, 5, and 6C: Open to drift gillnets 12 p.m. (noon), Saturday, July 25, 2015, to 12 p.m. (noon), Wednesday, July 29, 2015.

Fraser River Panel Order Number 2015-02: Issued 11:50 a.m., July 28, 2015

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Wednesday, July 29, 2015, through 12 p.m. (noon), Saturday, August 1, 2015.

Fraser River Panel Order Number 2015-03: Issued 12:30 p.m., July 31, 2015

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Saturday,

August 1, 2015, through 12 p.m. (noon), Wednesday, August 5, 2015.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m. to 11:59 p.m. (midnight), Saturday, August 1, 2015, and from 5 a.m. to 11:59 p.m. (midnight), Monday, August 3, 2015.

All Citizen Fishery

Areas 7 and 7A: Open to reefnets from 9 a.m. to 9 p.m., Saturday, August 1, 2015.

Areas 7 and 7A: Open to purse seines from 9 a.m. to 9 p.m., Sunday, August 2, 2015.

Areas 7 and 7A: Open to drift gillnets from 11 a.m. to 11 p.m., Sunday, August 2, 2015.

Fraser River Panel Order Number 2015-04: Issued 12:30 p.m., August 4, 2015

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Wednesday, August 5, 2015, to 12 p.m. (noon), Saturday, August 8, 2015.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m., Thursday, August 6, 2015, to 9 a.m., Friday, August 7, 2015.

All Citizen Fishery

Areas 7 and 7A: Open to reefnets from 5 a.m. to 9 p.m., Thursday, August 6, 2015, and 5 a.m. to 9 p.m., Friday, August 7, 2015.

Areas 7 and 7A: Open to purse seines from 5 a.m. to 9 p.m., Wednesday, August 5, 2015, and 5 a.m. to 9 p.m., Friday, August 7, 2015.

Areas 7 and 7A: Open to drift gillnets from 8 a.m. to 11:59 p.m. (midnight), Wednesday, August 5, 2015, and from 8 a.m. to 11:59 p.m. (midnight), Friday, August 7, 2015.

Fraser River Panel Order Number 2015-05: Issued 12:30 p.m., August 7, 2015

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Saturday, August 8, 2015, to 12 p.m. (noon), Wednesday, August 12, 2015.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m., Sunday, August 9, 2015, to 9 a.m., Tuesday, August 11, 2015.

All Citizen Fishery

Areas 7 and 7a: Open to reefnets from 5 a.m. to 9 p.m., Saturday, August 8, 2015.

Areas 7 and 7A: Open to purse seines from 5 a.m. to 9 p.m., Saturday, August 8, 2015.

Areas 7 and 7A: Open to drift gillnets from 8 a.m. to 11:59 p.m. (midnight), Saturday, August 8, 2015.

² See 40 CFR 97.511(c).

Fraser River Panel Order Number 2015–06: Issued 8:30 p.m., August 24, 2015

Treaty Indian Fishery

Areas 4B, 5, and 6C: Open to drift gillnets from 12 p.m. (noon), Tuesday, August 25, 2015, through 12 p.m. (noon), Saturday, August 29, 2015. Sockeye may be retained for ceremonial and subsistence purposes only.

Areas 6, 7, and 7A: Open for net fishing from 5:00 a.m., Thursday, August 27, 2015, through 9:00 a.m., Saturday, August 29, 2015. Sockeye may be retained for ceremonial and subsistence purposes only.

All Citizen Fishery

Areas 7 and 7A: Open to reefnets, with non-retention of sockeye, from 5 a.m. to 9 p.m., Wednesday, August 26, 2015, and 5 a.m. to 9 p.m., Thursday, August 27, 2015.

Areas 7 and 7A: Open to purse seines, with non-retention of sockeye, from 5 a.m. to 9 p.m., Tuesday, August 25, 2015, and 5 a.m. to 9 p.m., Wednesday, August 26, 2015.

Areas 7 and 7A: Open to drift gillnets, with non-retention of sockeye, from 8 a.m. to 11:59 p.m. (midnight), Tuesday, August 25, 2015, and 8 a.m. to 11:59 p.m. (midnight), Wednesday, August 26, 2015.

Fraser River Panel Order Number 2015–07: Issued 12:30 p.m., August 28, 2015

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Saturday, August 29, 2015, through 12 p.m. (noon), Wednesday, September 2, 2015. Sockeye may be retained for ceremonial and subsistence purposes only.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m., Monday, August 31, 2015, through 9 a.m., Tuesday, September 1, 2015. Sockeye may be retained for ceremonial and subsistence purposes only.

All Citizen Fishery

Areas 7 and 7A: Open to reefnets, with non-retention of sockeye, from 5 a.m. to 9 p.m., Sunday August 30, 2015, and from 5 a.m. to 9 p.m., Monday, August 31, 2015.

Areas 7 and 7A: Open to purse seines, with non-retention of sockeye, from 5 a.m. to 9 p.m., Sunday, August 30, 2015.

Areas 7 and 7A: Open to drift gillnets, with non-retention of sockeye, from 8 a.m. to 11:59 p.m. (midnight), Sunday, August 30, 2015.

Fraser River Panel Order Number 2015–08: Issued 9:45 a.m., August 31, 2015

All Citizen Fishery

Areas 7 and 7A: Open to reefnets, with non-retention of sockeye, from 5 a.m. to 9 p.m., Tuesday, September 1, 2015.

Areas 7 and 7A: Open to purse seines, with non-retention of sockeye, from 5 a.m. to 9 p.m., Tuesday, September 1, 2015.

Areas 7 and 7A: Open to drift gillnets, with non-retention of sockeye, from 8 a.m. to 11:59 p.m. (midnight), Tuesday, September 1, 2015.

Fraser River Panel Order Number 2015–09: Issued 11:50 a.m., September 8, 2015

Treaty Indian and All Citizen Fisheries

Areas 4B, 5, 6, 6C, 7, and 7A, excluding the Apex: Relinquish regulatory control effective 11:59 p.m. (midnight), Tuesday, September 8, 2015. The Apex is those waters north and west of the Area 7A “East Point Line,” defined as a line projected from the low water range marker in Boundary Bay on the U.S./Canada border through the east tip of Point Roberts, WA, to the East Point Light on Saturna Island in the Canadian Province of British Columbia.

Fraser River Panel Order Number 2015–10: Issued 3 p.m., October 8, 2015

Treaty Indian and All Citizen Fisheries

Area 7A, the Apex: Relinquish regulatory control in the remaining portion of catch area 7A, referred to as the Apex, effective 11:59 p.m. (midnight), Friday, October 9, 2015.

Classification

The Assistant Administrator for Fisheries NOAA (AA), finds that good cause exists for the inseason orders to be issued without affording the public prior notice and opportunity for comment under 5 U.S.C. 553(b)(B) as such prior notice and opportunity for comments is impracticable and contrary to the public interest. Prior notice and opportunity for public comment is impracticable because NMFS has insufficient time to allow for prior notice and opportunity for public comment between the time the stock abundance information is available to determine how much fishing can be allowed and the time the fishery must open and close in order to harvest the appropriate amount of fish while they are available.

The AA also finds good cause to waive the 30-day delay in the effective date, required under 5 U.S.C. 553(d)(3), of the inseason orders. A delay in the

effective date of the inseason orders would not allow fishers appropriately controlled access to the available fish at that time they are available.

This action is authorized by 50 CFR 300.97, and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 3636(b).

Dated: November 5, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–28673 Filed 11–10–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 150316270–5270–01]

RIN 0648–XE259

Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #37 Through #39

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

ACTION: Modification of fishing seasons; request for comments.

SUMMARY: NMFS announces three inseason actions in the ocean salmon fisheries. These inseason actions modified the commercial salmon fisheries in the area from the U.S./Canada border to Humboldt South Jetty, CA.

DATES: The effective dates for the inseason actions are set out in this document under the heading Inseason Actions. Comments will be accepted through November 27, 2015.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2015–0001, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2015-0001, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–6349

Instructions: Comments sent by any other method, to any other address or

individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT:
Peggy Mundy at 206-526-4323.

SUPPLEMENTARY INFORMATION:

Background

In the 2015 annual management measures for ocean salmon fisheries (80 FR 25611, May 5, 2015), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, beginning May 1, 2015, and 2016 salmon fisheries opening earlier than May 1, 2016. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Pacific Fishery Management Council (Council) and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions). The state management agencies that participated in the consultations described in this document were: California Department of Fish and Wildlife (CDFW), Oregon Department of Fish and Wildlife (ODFW), and Washington Department of Fish and Wildlife (WDFW).

Management of the salmon fisheries is generally divided into two geographic areas: North of Cape Falcon (U.S./Canada border to Cape Falcon, OR) and south of Cape Falcon (Cape Falcon, OR, to the U.S./Mexico border). The inseason actions reported in this document affect fisheries north and south of Cape Falcon. Within the south of Cape Falcon area, the Klamath Management Zone (KMZ) extends from Humbug Mountain, OR, to Humboldt South Jetty, CA, and is divided at the Oregon/California border into the Oregon KMZ to the north and California KMZ to the south. All times mentioned refer to Pacific daylight time.

Inseason Actions

Inseason Action #37

Description of action: Inseason action #37 adjusted the remaining coho quota in the commercial salmon fishery from Queets River, WA, to Cape Falcon, OR, on an impact-neutral basis, from mark-selective to non-mark-selective. The adjusted non-mark-selective coho quota was 6,100.

Effective dates: Inseason action #37 took effect on September 18, 2015, and remained in effect until the end of the commercial salmon fishing season.

Reason and authorization for the action: The purpose of this action was to allow for increased access to the coho quota, which had not been fully utilized, while not exceeding the impact limits for protected stocks. The annual management measures (80 FR 25611, May 5, 2015) provide for inseason action to modify the regulations that restrict retention of unmarked coho. To accommodate modifying the regulations from a mark-selective to non-mark-selective coho fishery while still achieving management objectives, including not exceeding allowable impacts on constraining stocks, the Council's Salmon Technical Team (STT) calculated the necessary adjustments to the coho quota on an impact-neutral basis for the constraining stocks in the Queets River to Cape Falcon area. In this instance, the constraining stock was Lower Columbia River natural coho. The RA approved the STT's impact-neutral conversion of the remaining recreational mark-selective coho quota to non-mark-selective coho quota. Modification of quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #37 occurred on September 17, 2015. Participants in this consultation were staff from NMFS, WDFW, and ODFW. Council staff was unavailable to participate in the consultation, but was advised of the RA's decision after the consultation concluded.

Inseason Action #38

Description of action: Inseason action #38 modified landing and possession limits in the commercial salmon fishery between Queets River and Cape Falcon to allow retention of 80 non-mark-selective coho per vessel per open period. The previous landing limit for coho was 50 marked coho per vessel per open period.

Effective dates: Inseason action #38 took effect on September 18, 2015, and remained in effect until the end of the commercial salmon fishing season.

Reason and authorization for the action: The purpose of this action was to allow for increased access to the coho quota, which had not been fully utilized, while not exceeding the impact limits for protected stocks. The annual management measures (80 FR 25611, May 5, 2015) provide for inseason action to modify the regulations that restrict retention of unmarked coho. The RA considered fishery effort, coho catch to date, and the non-mark-selective quota conversion implemented under inseason action #37, and determined that modifying the fishery to allow retention of unmarked coho could be implemented within the allowable impacts on the constraining stock and without exceeding the non-mark-selective coho quota. Inseason action to modify limited retention regulations is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #38 occurred on September 17, 2015. Participants in this consultation were staff from NMFS, WDFW, and ODFW. Council staff was unavailable to participate in the consultation, but was advised of the RA's decision after the consultation concluded.

Inseason Action #39

Description of action: Inseason action #39 modified the open period in the commercial salmon fishery in the California KMZ from five days per week to seven days per week.

Effective dates: Inseason action #39 took effect on September 23, 2015, and remained in effect until the end of the 2015 commercial salmon fishery.

Reason and authorization for the action: During the preseason planning process, the open period for the commercial salmon fishery in the California KMZ, September 11 through September 30, was set at five days per week (Friday through Tuesday), to manage landings in this quota-based fishery. The RA considered fishery effort and Chinook landings to date, both of which were very low due to unfishable weather conditions and lack of productive fishing, and determined that allowing the fishery to remain open seven days per week would provide access to remaining Chinook quota without risk of exceeding the quota for the season. Modification of quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #39 occurred on September 21, 2015. Participants in this consultation were staff from NMFS, Council, CDFW, and ODFW.

All other restrictions and regulations remain in effect as announced for the 2015 ocean salmon fisheries and 2016 salmon fisheries opening prior to May 1, 2016 (80 FR 25611, May 5, 2015) and as modified by prior inseason actions.

The RA determined that the best available information indicated that coho and Chinook salmon catch to date and fishery effort supported the above inseason actions recommended by the states of Washington, Oregon, and California. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the time the action was effective, by telephone hotline numbers 206-526-6667 and 800-662-9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (80 FR 25611, May 5, 2015), the West Coast Salmon Fishery Management Plan (Salmon FMP), and regulations implementing the Salmon FMP, 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time Chinook salmon catch and effort assessments and projections were developed and

fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information, ensuring that conservation objectives and ESA consultation standards are not exceeded. The AA also finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the Salmon FMP and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: November 5, 2015.

Emily H. Menashes,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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Proposed Rules

Federal Register

Vol. 80, No. 218

Thursday, November 12, 2015

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 ENERGY

10 CFR Parts 429 and 431

[Docket Number EERE–2014–BT–STD–0027]

RIN 1904–AD31

Energy Conservation Standards for Commercial Prerinse Spray Valves: Availability of Provisional Analysis Tools

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of data availability (NODA).

SUMMARY: The U.S. Department of Energy (DOE) published a notice of proposed rulemaking (NOPR) for the commercial prerinse spray valve (CPSV) energy conservation standards rulemaking on July 9, 2015. 80 FR 39486. In response to comments on the NOPR, DOE has revised its analyses. This NODA announces the availability of those updated analyses and results, and give interested parties an opportunity to comment and submit additional data to support DOE's CPSV rulemaking. At this time, DOE is not proposing any energy conservation standard for commercial prerinse spray valves. The NODA analysis is publicly available at: https://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=100.

DATES: DOE will accept comments, data, and information regarding this NODA submitted no later than November 27, 2015.

ADDRESSES: The docket, which includes Federal Register notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, some documents listed in the index, such as those containing

information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: <http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0027>. The regulations.gov Web page contains instructions on how to access all documents in the docket, including public comments.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email at Brenda.Edwards@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT: Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8654. Email: commercial_pre-rinse_spray_valves@EE.Doe.Gov.

Mr. Peter Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7935. Email: Peter.Cochran@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

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I. History of Energy Conservation Standards Rulemaking for Commercial Prerinse Spray Valves

Title III, Part B¹ of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for

¹ For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

Consumer Products Other Than Automobiles.² These products include commercial prerinse spray valves (CPSVs), the subject of this rulemaking.³ EPCA, as amended, prescribes energy conservation standards for commercial prerinse spray valves (42 U.S.C. 6295(dd)), and requires DOE to conduct rulemakings to determine whether to amend CPSV standards no later than 6 years after issuance of any final rule establishing or amending a standard. (42 U.S.C. 6295(m)(1))

DOE published a notice of proposed rulemaking (NOPR) proposing amended energy conservation standards for commercial prerinse spray valves on July 9, 2015 (herein known as “the CPSV NOPR”). 80 FR 39486. DOE posted the CPSV NOPR, as well as the complete CPSV NOPR technical support document (TSD), on its Web site.⁴ The NOPR and associated TSD proposed new CPSV product classes based on spray force, and presented results for the engineering analysis, economic analyses, and proposed standard levels. DOE held a public meeting on July 28, 2015 to present the CPSV NOPR. At the public meeting, and during the comment period, DOE received comments that addressed issues raised in the CPSV NOPR.

II. Current Status

In response to comments DOE received in response to the CPSV NOPR, DOE has revised the analyses presented in the CPSV NOPR. This NODA announces the availability of those updated analyses and results and invites interested parties to submit comments or additional data to support DOE's ongoing CPSV rulemaking.

² All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Pub. L. 114–11 (Apr. 30, 2015).

³ Because Congress included commercial prerinse spray valves in Part A of Title III of EPCA, the consumer product provisions of Part A (not the industrial equipment provisions of Part A–1) apply to commercial prerinse spray valves. However, because commercial prerinse spray valves are commonly considered to be commercial equipment, as a matter of administrative convenience and to minimize confusion among interested parties, DOE placed the requirements for commercial prerinse spray valves into subpart O of 10 CFR part 431. [71 FR 71340, 71374 (Dec. 8, 2006)]. Part 431 contains DOE regulations for commercial and industrial equipment.

⁴ The CPSV NOPR notice, CPSV NOPR TSD, and CPSV NOPR analysis public meeting information are available at regulations.gov under docket number EERE–2014–BT–STD–0027.

The analysis tools described in this notice were developed to support a potential energy conservation standard for commercial prerinse spray valves. At this time, DOE intends to move forward with its traditional regulatory rulemaking activities to develop an energy conservation standard for commercial prerinse spray valves. The provisional analysis presented in today's notice is a step in this process. The final rule will include a TSD, which will contain a detailed written account of the analyses performed in support of the final rule, which will include updates to the analyses made available in this NODA.

In this NODA, DOE is not proposing any energy conservation standards for commercial prerinse spray valves. DOE may revise the analysis presented in the NODA based on any new or updated information or data it obtains between now and the publication of the final rule for commercial prerinse spray valves. DOE encourages stakeholders to provide any additional data or information that may improve the analysis.

III. Summary of the Analyses Performed by the Department of Energy

DOE conducted analyses of commercial prerinse spray valves in the following areas: (1) Engineering, (2) manufacturer impacts, (3) life-cycle cost and payback period, and (4) national impacts. The tools used in preparing these analyses (engineering, life-cycle cost, national impacts, and manufacturer impacts spreadsheets) and their respective results are available at: <http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0027>. Each individual spreadsheet includes an introduction describing the various inputs and outputs for the analysis, as well as operation instructions. A brief description of each of these analysis tools is provided below. The key aspects of the present analyses and DOE's updates to the CPSV NOPR analyses are described in the following sections.

A. Engineering Analysis

The engineering analysis establishes the relationship between the manufacturer production cost (MPC) and efficiency levels for each product class of commercial prerinse spray valves. This relationship serves as the basis for cost-benefit calculations performed in the other three analysis tools for individual consumers, manufacturers, and the nation.

In the CPSV NOPR, DOE proposed three product classes that were delineated by spray force. DOE analyzed several efficiency levels of specific flow

rates for each product class. DOE received feedback from interested parties opposing the three product class structure and recommending a single product class. (Chicago Faucets, No. 26 at pp. 1–2; PMI, No. 27 at p. 1; Fisher, No. 30 at p. 1; ASAP, NEEA, NRDC, No. 32 at p. 1; PG&E, SCE, SCGC, SDG&E, No. 34 at p. 1–2; AWE, No. 28 at p. 7; and T&S Brass, No. 33 at p. 2)

DOE is required by EPCA to consider performance-related features that justify different standard levels, such as features affecting customer utility, when establishing or amending energy conservation standards. 42 U.S.C. 6295(q) In response to comments from interested parties, DOE reviewed the market for commercial prerinse spray valves and available data regarding their typical performance and usage characteristics in different applications.

DOE market research shows that commercial prerinse spray valves have a range of flow rates, spray forces, and spray shapes. For example, manufacturers market commercial prerinse spray valves at lower flow rates with specific terminology such as “ultra-low-flow” or “low-flow” spray valves, indicating that there are diverse products available to satisfy different consumer needs when selecting commercial prerinse spray valves. Conversely, for commercial prerinse spray valves at higher flow rates, DOE has predominately observed shower-type units. Shower-type units contain multiple orifices, as opposed to more traditional, single-orifice CPSV unit. In the CPSV NOPR public meeting, T&S Brass stated that consumer satisfaction is very high at the upper range of the market flow rate distribution, and that the showerhead-type commercial prerinse spray valves in the upper range of the market flow rate distribution represent the majority of the market and highest level of customer satisfaction because these units prevent splash-back. (T&S, Public Meeting Transcript, No. 23 at pp. 42–43) T&S Brass also commented that there are several applications of commercial prerinse spray valves, and all may require different spray forces. (T&S Brass, Public Meeting Transcript, No. 6 at p. 39) Based on the above information, DOE believes that the CPSV market offers a variety of prerinse spray valves that have different design features and different end-user applications that affect consumer utility.

Additionally, DOE found a strong linear relationship between spray force and flow rate, indicating that spray force is an important performance related feature that affects consumer utility. The relationship between spray force and

flow rate is presented in the accompanying engineering spreadsheet. DOE constructed the flow rate-spray force relationship using data primarily from DOE testing, and supplementary data from DOE's Compliance Certification Management System (CCMS), the U.S. Environmental Protection Agency's (EPA) WaterSense[®] program, and Food Service Technology Center (FSTC) reports.^{5 6 7} Additionally, DOE's research shows that spray force relates to user satisfaction; a WaterSense field study found that low water pressure, or spray force, is a source of user dissatisfaction. WaterSense evaluated 14 commercial prerinse spray valve models and collected 56 consumer satisfaction reviews, of which 9 indicated unsatisfactory performance. Seven of the nine unsatisfactory reviews were attributed, among other factors, to the water pressure, or the user-perceived force of the spray.⁸ Therefore, DOE concludes that separating commercial prerinse spray valves into product classes based on spray force is justified, because spray force is a performance-related feature that affects consumer utility, and spray force is strongly correlated with flow rate.

To determine the number of product classes, DOE tested and analyzed a wide range of CPSV units on the market, spanning multiple manufacturers, flow rates, and spray shapes. Based on DOE's test data and additional market research, DOE found that available CPSV models could be differentiated into three distinct spray force ranges. DOE believes that each spray force range represents a specific CPSV application. This conclusion is supported by comments submitted by T&S Brass to the Framework document, suggesting three product classes: (1) An ultra low-flow commercial prerinse spray valve with a maximum flow rate of 0.8 gallons per minute (gpm), (2) a low-flow commercial prerinse spray valve with flow rates of 0.8 to 1.28 gpm, and (3) a standard commercial prerinse spray valve with flow rates of 1.28 to 1.6 gpm. (T&S Brass, No. 12 at p. 3) Therefore, in this NODA, DOE maintains the three

⁵ DOE compliance certification data for commercial prerinse spray valves available at www.regulations.doe.gov/certification-data/.

⁶ EPA WaterSense program, September 19, 2013. *WaterSense Specification for Commercial Pre-Rinse Spray Valves Supporting Statement*. Version 1.0. http://www.epa.gov/watersense/partners/prsv_final.html.

⁷ Food Service Technology Center test data for prerinse spray valves available at www.fishnick.com/equipment/sprayvalves/.

⁸ EPA WaterSense, *Prerinse Spray Valves Field Study Report*, at 24–25 (Mar. 31, 2011) (Available at: www.epa.gov/watersense/docs/final_epa_prsv_study_report_033111v2_508.pdf).

product classes presented in the CPSV NOPR. However, based on feedback from interested parties, DOE renames the product classes as product class 1, 2, and 3 instead of using the terminology “light-duty”, “standard-duty”, and “heavy-duty,” respectively. As defined, product class 1 provides distinct utility for cleaning delicate glassware and removing loose food particles from dishware, product class 2 provides distinct utility for cleaning wet foods, and product class 3 provides distinct utility for cleaning baked-on foods and preserving shower-type units, which prevent splash-back.

For each of the product classes, DOE determined the spray force ranges based on the CPSV flow rate-spray force linear relationship. DOE’s product class 1 includes units less than or equal to 5 ounce-force (ozf), product class 2 includes units greater than 5 ozf but less than or equal to 8 ozf, and product class 3 includes units greater than 8 ozf. DOE selected 8.0 ozf as the spray force cut-off between product class 2 and product class 3 based on test results of commercial prerinse spray valves with shower-type spray shapes. DOE testing showed that the upper range of the market, in terms of flow rate, predominantly includes shower-type units. DOE found that the lowest tested spray force of any shower-type unit was 8.1 ozf. Therefore, to maintain the consumer utility provided by shower-type units, DOE selected 8.0 ozf to differentiate product class 3 units from other commercial prerinse spray valves available on the market. Additionally, this spray force threshold is corroborated by T&S Brass’s comments to the Framework document suggesting three product classes. T&S Brass suggested a flow rate cut-off of 1.28 gpm between the “low-flow” and “standard” commercial prerinse spray valves. (T&S Brass, No. 12 at p. 3) Converting this

flow rate into spray force using the flow rate-spray force linear relationship equates 1.28 gpm to 8.5 ozf. This spray force can be conservatively rounded to 8.0 ozf.

DOE selected 5.0 ozf as the spray force cut-off between product class 1 and product class 2 based on DOE’s test data and market research, which clearly showed a cluster of CPSV units above and below that threshold. One cluster of CPSV units had spray force ranges between 4.1 and 4.8 ozf, and the other cluster was between 5.5 and 7.7 ozf. Therefore, DOE established the threshold between the two classes at 5.0 ozf. This spray force threshold is corroborated by T&S Brass’s comment to the Framework document suggesting a flow rate cut-off of 0.80 gpm between the “ultra-low-flow” and “low-flow” commercial prerinse spray valves, which equates to 5.3 ozf using the flow rate-spray force linear relationship. This spray force can be conservatively rounded to 5.0 ozf.

While DOE acknowledges the comments from interested parties regarding DOE’s CPSV product class structure, DOE maintains that all available data and information from manufacturers suggests that: (1) Flow rate and spray force are strongly correlated, and (2) CPSV units with different flow rates or spray forces are available in the market, and provide distinct consumer utility in the different applications those units are designed to serve. Therefore, in this NODA, DOE has maintained the product class structure presented in the NOPR, with three product classes differentiated by spray force.

1. Summary of Engineering Updates for the NODA

In addition to the product class structure, DOE received comment on, and updated a number of other

assumptions in its engineering analysis presented in this NODA. In addition, DOE conducted additional testing of CPSV units to gather more data on the range of CPSV products available in the market. Specifically, DOE’s revised updates include the following:

- Based on new test data, DOE updated the flow rate-spray force relationship, which is presented in the accompanying engineering spreadsheet.

- Based on new test data, DOE updated the approach to define baseline levels for product class 1 and product class 2 to be the higher flow rate of either (1) the tested least-efficient unit or (2) the theoretical least-efficient unit at the intersection of the flow rate-spray force linear relationship and the spray force bounds. In product class 1, DOE revised the baseline to 1.00 gpm, which is a tested unit with a flow rate of 0.97 gpm, rounded-up to a whole number. This is greater than the theoretical flow rate at the intersection of the flow rate-spray force linear relationship and the spray force bound of 5.0 ozf, which is 0.75 gpm. In product class 2, DOE revised the baseline level to 1.20 gpm, which is the intersection of the flow rate-spray force linear relationship and the 8.0 ozf spray force bound. The baseline for product class 3 is the current DOE standard of 1.6 gpm.

- Based on new test data, DOE revised the max-tech levels from 0.65, 0.97, and 1.24 gpm to 0.62, 0.73, and 1.13 gpm for product class 1, product class 2 and product class 3, respectively.

- Based on the updates to the baseline and max-tech levels, DOE updated the EL 1 and EL 2 flow rates in product class 1 and product class 2 to reflect a 15 percent and 25 percent improvement, respectively, over the baseline efficiency. Table III.1 through Table III.3 provide the updated efficiency levels for all product classes.

TABLE III.1—EFFICIENCY LEVELS FOR CPSV PRODUCT CLASS 1
[Spray force ≤ 5 ozf]

Efficiency level	Description	Flow rate (gpm)
Level 0	Baseline	1.00
Level 1	15% improvement over baseline	0.85
Level 2	25% improvement over baseline	0.75
Level 3	Maximum available (“max tech”)	0.62

TABLE III.2—EFFICIENCY LEVELS FOR CPSV PRODUCT CLASS 2
[5 ozf < Spray force ≤ 8 ozf]

Efficiency level	Description	Flow rate (gpm)
Level 0	Baseline	1.20
Level 1	15% improvement over baseline	1.02

TABLE III.2—EFFICIENCY LEVELS FOR CPSV PRODUCT CLASS 2—Continued
[5 ozf < Spray force ≤ 8 ozf]

Efficiency level	Description	Flow rate (gpm)
Level 2	25% improvement over baseline	0.90
Level 3	Maximum available (“max tech”)	0.73

TABLE III.3—EFFICIENCY LEVELS FOR CPSV PRODUCT CLASS 3
[Spray force > 8 ozf]

Efficiency level	Description	Flow rate (gpm)
Level 0	Baseline	1.60
Level 1	10% improvement over baseline	1.44
Level 2	WaterSense Level; 20% improvement over baseline	1.28
Level 3	Maximum available (max-tech)	1.13

B. Life-Cycle Cost and Payback Period Analysis

The life-cycle cost (LCC) and payback period (PBP) analysis determines the economic impact of potential standards on individual consumers. The LCC is the total cost of purchasing, installing and operating a commercial prerinse spray valve over the course of its lifetime. The LCC analysis compares the LCC of a commercial prerinse spray valve designed to meet possible energy conservation standards with the LCC of a commercial prerinse spray valve likely to be installed in the absence of standards. DOE determines LCCs by considering (1) total installed cost to the consumer (which consists of manufacturer selling price, distribution chain markups, and sales taxes), (2) the range of annual energy consumption of commercial prerinse spray valves that meet each of the efficiency levels considered as they are used in the field, (3) the operating cost of commercial prerinse spray valves (e.g., energy cost), (4) CPSV lifetime, and (5) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the typically increased purchase price of higher-efficiency commercial prerinse spray valves through savings in operating costs. PBP is calculated by dividing the incremental increase in installed cost of the higher efficiency product, compared to the baseline product, by the annual savings in operating costs. In this analysis, because more efficient products do not cost more than baseline efficiency products, the PBP is zero, meaning that consumers do not have any incremental product costs to recover via lower operating costs.

For commercial prerinse spray valves, DOE performed an energy and water use

analysis that calculated energy and water use of commercial prerinse spray valves at each efficiency level within each product class identified in the engineering analysis. DOE determined the range of annual energy consumption and annual water consumption using the flow rate of each EL within each product class from the engineering analysis, the average annual operating time, and the energy required to heat a gallon of water used at the commercial prerinse spray valve. Recognizing that several inputs to the determination of consumer LCC and PBP are either variable or uncertain (e.g., annual energy consumption, product lifetime, electricity price, discount rate), DOE conducts the LCC and PBP analysis by modeling both the uncertainty and variability in the inputs using a Monte Carlo simulation and probability distributions.

The primary outputs of the LCC and PBP analysis are (1) average LCCs, (2) median PBPs, and (3) the percentage of consumers that experience a net cost for each product class and efficiency level. The average annual energy consumption derived in the LCC analysis is used as an input to the National Impact Analysis (NIA).

C. National Impact Analysis

The NIA estimates the national energy savings (NES), national water savings (NWS), and the net present value (NPV) of total consumer costs and savings expected to result from potential new standards at each trial standard level (TSL). DOE defined four TSLs in the CPSV NOPR, and in this NODA provides three additional TSLs. The new TSLs analyzed in this NODA are shown in Table III.4. DOE defined these three TSLs based on flow rates for each product class that would not induce consumers to switch product classes (as

discussed in the CPSV NOPR) as a result of a standard at those TSLs. That is, DOE selected flow rates that would allow consumers to maintain provided utility without purchasing units from a different product class.

TABLE III.4—EFFICIENCY LEVELS BY PRODUCT CLASS AND TSL

TSL	Product class 1	Product class 2	Product class 3
A	0	0	1
B	0	0	2
C	0	0	3

DOE calculated NES, NWS, and NPV for each TSL as the difference between a no-new-standards case scenario (without new standards) and the standards-case scenario (with standards). Cumulative energy savings are the sum of the annual NES determined over the lifetime of commercial prerinse spray valves shipped during the analysis period. Energy savings reported include the full-fuel cycle energy savings (i.e., inclusive of the energy needed to extract, process, and deliver primary fuel sources such as coal and natural gas, and the conversion and distribution losses of generating electricity from those fuel sources). Similarly, cumulative water savings are the sum of the annual NWS determined over the lifetime of commercial prerinse spray valves shipped during the analysis period. The NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and any changes in total installed costs. NPV results are reported for discount rates of 3 percent and 7 percent.

To calculate the NES, NWS, and NPV, DOE projected future shipments and

efficiency distributions (for each TSL) for each CPSV product class. After further research and consideration of public comments regarding product shipments (T&S, Public Meeting Transcript, No. 23 at pp. 81), DOE updated its shipments projections from the NOPR to more accurately characterize the CPSV market. The most significant update was allocating more of the overall market share to product class 3 products relative to product classes 1 and 2. Other inputs to the NIA include the estimated CPSV lifetime, final installed costs, and average annual energy and water consumption per unit from the LCC. For detailed NIA results for the newly-added TSLs, see Table IV.4 and Table IV.5.

The purpose of this NODA is to notify industry, manufacturers, consumer groups, efficiency advocates, government agencies, and other stakeholders on issues related to the provisional analysis of potential energy conservation standards for commercial prerinse spray valves. Stakeholders should contact DOE for any additional

information pertaining to the analyses performed for this NODA.

D. Manufacturer Impact Analysis

For the manufacturer impact analysis (MIA), DOE used the Government Regulatory Impact Model (GRIM) to assess the economic impact of potential standards on CPSV manufacturers. DOE developed key industry average financial parameters for the GRIM using publicly available data from corporate annual reports. Additionally, DOE used this and other publicly available information to estimate and account for the aggregate industry investment in capital expenditures and research and development required to produce compliant products at each efficiency level.

The GRIM uses this information in conjunction with inputs from other analyses including manufacturer production costs from the engineering analysis; shipments from the shipments analysis; and price trends from the national impact analysis (NIA) to model industry annual cash flows from the base year through the end of the

analysis period. The primary quantitative output of this model is the industry net present value (INPV), which DOE calculates as the sum of industry cash flows discounted to the present day using industry specific weighted average costs of capital.

Standards affect INPV by requiring manufacturers to make investments in manufacturing capital and product development. Under potential standards, DOE expects that manufacturers may lose a portion of their INPV, which is calculated as the difference between INPV in the no-new-standards case (absent new energy conservation standards) and in the standards case (with new energy conservation standards in effect). DOE examines a range of possible impacts on industry by modeling scenarios with various levels of investment.

IV. Results of the Economic Analyses

A. Economic Impacts on Consumers

Table IV.1 through Table IV.3 provide LCC and PBP results for the newly added TSLs discussed in section III.C.

TABLE IV.1—PRODUCT CLASS 1 LCC AND PBP RESULTS

Product Class 1 (spray force ≤ 5 ozf)						
TSL	Efficiency level	Average costs (2014\$)				Simple payback period (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC*	
A,B,C	0	76	487	2,229	2,305	0.0
	1	76	414	1,895	1,971	0.0
	2	76	366	1,672	1,748	0.0
	3	76	302	1,382	1,458	0.0

Product Class 1 (spray force ≤ 5 ozf)			
TSL	Efficiency level	Life-cycle cost savings**	
		% of customers that experience net cost	Average savings (2014\$)
A,B,C	0	0	0
	1	0	334
	2	0	557
	3	0	352

TABLE IV.2—PRODUCT CLASS 2 LCC AND PBP RESULTS

Product Class 2 (spray force > 5 ozf and ≤ 8 ozf)						
TSL	Efficiency level	Average costs (2014\$)				Simple payback period (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC*	
A,B,C	0	76	585	2,675	2,751	0.0
	1	76	497	2,274	2,350	0.0
	2	76	439	2,006	2,082	0.0

TABLE IV.2—PRODUCT CLASS 2 LCC AND PBP RESULTS—Continued

Product Class 2 (spray force > 5 ozf and ≤ 8 ozf)						
TSL	Efficiency level	Average costs (2014\$)				Simple payback period (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC*	
	3	76	356	1,627	1,704	0.0
Product Class 2 (spray force > 5 ozf and ≤ 8 ozf)						
TSL	Efficiency level	Life-cycle cost savings**				
		% of customers that experience net cost	Average savings (2014\$)			
A,B,C	0	0	0			
	1	0	401			
	2	0	446			
	3	0	825			

TABLE IV.3—PRODUCT CLASS 3 LCC AND PBP RESULTS

Product Class 3 (spray force > 8 ozf)						
TSL	Efficiency level	Average costs (2014\$)				Simple payback period (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC*	
A	0	76	780	3,566	3,643	0.0
B	1	76	702	3,210	3,286	0.0
C	2	76	624	2,853	2,929	0.0
	3	76	551	2,519	2,595	0.0
Product Class 3 (spray force > 8 ozf)						
TSL	Efficiency level	Life-cycle cost savings**				
		% of customers that experience net cost	Average savings (2014\$)			
A	0	0	0			
B	1	0	357			
C	2	0	547			
	3	0	766			

B. Economic Impacts on the Nation

Table IV.4 provides energy and water impacts associated with the newly-

added TSLs. Table IV.5, also for these selected TSLs, provides NPV results.

TABLE IV.4—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR PRODUCTS SHIPPED IN 2019–2048

TSL	Product class	National energy savings (quads)*		National water savings (billion gallons)
		Primary	Full-fuel cycle	
A	1 (≤5 ozf)	0.000	0.000	0.000
	2 (>5 ozf and ≤8 ozf)	0.000	0.000	0.000
	3 (>8 ozf)	0.032	0.035	41.590
Total TSL 1		0.032	0.035	41.590
B	1 (≤5 ozf)	0.000	0.000	0.000

TABLE IV.4—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR PRODUCTS SHIPPED IN 2019–2048—Continued

TSL	Product class	National energy savings (quads)*		National water savings (billion gallons)
		Primary	Full-fuel cycle	
Total TSL 4	2 (>5 ozf and ≤8 ozf)	0.000	0.000	0.000
	3 (>8 ozf)	0.093	0.101	119.572
		0.093	0.101	119.572
C	1 (≤5 ozf)	0.000	0.000	0.000
	2 (>5 ozf and ≤8 ozf)	0.000	0.000	0.000
	3 (>8 ozf)	0.166	0.180	212.175
Total TSL 5		0.166	0.180	212.175

*“quad” = one quadrillion British thermal units.

TABLE IV.5—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCTS SHIPPED IN 2019–2048

TSL	Product class	Net present value (billion \$2014)	
		7-Percent discount rate	3-Percent discount rate
A	1 (≤5 ozf)	0.000	0.000
	2 (>5 ozf and ≤8 ozf)	0.000	0.000
	3 (>8 ozf)	0.250	0.513
Total TSL 1		0.250	0.513
B	1 (≤5 ozf)	0.000	0.000
	2 (>5 ozf and ≤8 ozf)	0.000	0.000
	3 (>8 ozf)	0.718	1.476
Total TSL 4		0.718	1.476
C	1 (≤5 ozf)	0.000	0.000
	2 (>5 ozf and ≤8 ozf)	0.000	0.000
	3 (>8 ozf)	1.274	2.619
Total TSL 4		1.274	2.619

C. Economic Impacts on Manufacturers

Table IV.6 provides manufacturer impacts associated with the newly

added TSLs under the sourced materials conversion cost scenario. Table IV.7, also for these selected TSLs, provides

manufacturer impacts under the fabricated materials conversion cost scenario.

TABLE IV.6—MANUFACTURER IMPACT ANALYSIS FOR COMMERCIAL PRERINSE SPRAY VALVES UNDER THE SOURCED MATERIALS CONVERSION COST SCENARIO

	Units	No-standards case	Trial standard level		
			A	B	C
INPV	2014\$ MM	8.6	8.4	8.1	8.1
Change in INPV \$	2014\$ MM		(0.2)	(0.5)	(0.5)
Change in INPV %	%		(2.5)	(5.5)	(6.0)
Product Conversion Costs	2014\$ MM		0.4	0.8	0.8
Capital Conversion Costs	2014\$ MM			0.1	0.1
Total Investment Required	2014\$ MM		0.4	0.9	0.9

TABLE IV.7—MANUFACTURER IMPACT ANALYSIS FOR COMMERCIAL PRERINSE SPRAY VALVES UNDER THE FABRICATED MATERIALS CONVERSION COST SCENARIO

	Units	No-standards case	Trial standard level		
			A	B	C
INPV	2014\$ MM	8.6	8.0	7.6	7.5
Change in INPV \$	2014\$ MM		(0.6)	(0.9)	(1.1)
Change in INPV %	%		(6.5)	(11.1)	(12.6)
Product Conversion Costs	2014\$ MM		0.4	0.8	0.8
Capital Conversion Costs	2014\$ MM		0.4	0.6	0.8
Total Investment Required	2014\$ MM		0.8	1.4	1.6

V. Public Participation

DOE is interested in receiving comments on all aspects of the data and analysis presented in the NODA and supporting documentation that can be found at: https://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/54.

A. Submission of Comments

DOE will accept comments, data, and information regarding this notice no later than the date provided in the **DATES** section at the beginning of this notice. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via www.regulations.gov. The www.regulations.gov Web page will require you to provide your name and contact information. Your contact information will only be viewable to DOE Building Technologies staff. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

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

Do not submit to www.regulations.gov information for which disclosure is

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

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

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

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in portable document format (PDF) (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format.

Provide documents that are not secured, that are written in English, and that are free of any defects or viruses.

Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

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

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two well-marked copies: One copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

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

It is DOE's policy that all comments may be included in the public docket, without change and as received,

including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Issued in Washington, DC, on November 5, 2015.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2015-28675 Filed 11-10-15; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2015-4811; Directorate Identifier 2015-NM-104-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL-600-2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL-600-2D15 (Regional Jet Series 705) airplanes, Model CL-600-2D24 (Regional Jet Series 900) airplanes, and Model CL-600-2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by the discovery of a number of incorrectly calibrated angle of attack (AOA) transducers installed in the stall protection system. This proposed AD would require replacement of affected AOA transducers. We are proposing this AD to detect and replace incorrectly calibrated AOA transducers; incorrect calibration of the transducers could result in late activation of the stick pusher.

DATES: We must receive comments on this proposed AD by December 28, 2015.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of

Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; email thd.crj@aero.bombardier.com; Internet <http://www.bombardier.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

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-2015-4811; 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE-171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7318; fax 516-794-5531.

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-2015-4811; Directorate Identifier 2015-NM-104-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each

substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2015-18, effective July 16, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model CL-600-2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL-600-2D15 (Regional Jet Series 705) airplanes, Model CL-600-2D24 (Regional Jet Series 900) airplanes, and Model CL-600-2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

It was discovered that a number of [angle of attack] AOA transducers installed on Bombardier CL-600-2C10, CL-600-2D15, CL-600-2D24, and CL-600-2E25 aeroplanes were incorrectly calibrated due to a quality control problem at both the production and repair facilities. Incorrect calibration of the AOA transducer could result in a late activation of the stick pusher.

This [Canadian] AD mandates the replacement of the incorrectly calibrated AOA transducer.

You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-4811.

Related Service Information Under 14 CFR Part 51

Bombardier, Inc. has issued Bombardier Service Bulletin 670BA-27-069, dated March 30, 2015. The service information describes procedures for replacement of the transducers with correctly calibrated AOA transducers. 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 of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 400 airplanes of U.S. registry.

We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Required parts would cost about \$10,000 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be \$4,136,000, or \$10,340 per product.

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA-2015-4811; Directorate Identifier 2015-NM-104-AD.

(a) Comments Due Date

We must receive comments by December 28, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Bombardier, Inc. airplanes, certificated in any category.

(1) Model CL-600-2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10002 through 10999 inclusive.

(2) Model CL-600-2D15 (Regional Jet Series 705) airplanes and Model CL-600-2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15999 inclusive.

(3) Model CL-600-2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 through 19990 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by the discovery of a number of incorrectly calibrated angle of attack (AOA) transducers installed in the stall protection system. We are issuing this AD to detect and replace incorrectly calibrated AOA transducers; incorrect calibration of the transducers could result in late activation of the stick pusher.

(f) Compliance

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

(g) Replacement

Within 2,500 flight hours or 12 months, whichever occurs first after the effective date of this AD, replace the AOA transducers identified in paragraph 1.A., "Effectivity," of Bombardier Service Bulletin 670BA-27-069, dated March 30, 2015, with correctly calibrated AOA transducers, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA-27-069, dated March 30, 2015.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, an AOA transducer having a part number or serial number identified in paragraph 1.A., "Effectivity," of Bombardier Service Bulletin 670BA-27-069, dated March 30, 2015.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531. 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. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE-170, Engine and Propeller Directorate, FAA; or Transport Canada Civil Aviation (TCCA) or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF-2015-18, dated July 16, 2015, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-4811.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; email thd.crj@aero.bombardier.com; Internet <http://www.bombardier.com>. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on October 30, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015-28562 Filed 11-10-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2015-4809; Directorate Identifier 2015-NM-012-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Defense and Space S.A. (formerly known as Construcciones Aeronauticas, S.A.) Model CN-235-200 and CN-235-300 airplanes. This proposed AD was prompted by reports of false engine fire warning events, which consequently led to engine in-flight shut down. This proposed AD would require modification of the location and routing of the engine fire detection system. We are proposing this AD to prevent unnecessary engine in-flight shut down, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by December 28, 2015.

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

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

For service information identified in this proposed AD, contact EADS-CASA, Military Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; email MTA.TechnicalService@casa.eads.net; Internet <http://www.eads.net>. You may

view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

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-2015-4809; 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1112; fax 425-227-1149.

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-2015-4809; Directorate Identifier 2015-NM-012-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015-0011, dated January 20, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Defense and Space S.A. (formerly known as Construcciones Aeronauticas, S.A.)

Model CN-235-200 and CN-235-300 airplanes. The MCAI states:

Several cases of false engine fire warning events were reported, which consequently led to engine in-flight shut down (IFSD) executed by the flightcrew using the appropriate emergency procedures. Subsequent investigation determined that these false engine fire warnings were the result of insufficient insulation capability of the engine fire detection system. This allowed penetration of moisture into the fire detector connectors, reducing the insulation resistance between the inner electrode and connector housing below the required values.

This condition, if not corrected, could lead to further cases of unnecessary engine IFSD, possibly resulting in reduced control of the aeroplane.

To address this potential unsafe condition, EADS-CASA issued Service Bulletin (SB) SB235-26-0006 providing modification instructions.

For the reasons described above, this [EASA] AD requires modification of the location and routing of the engine fire detection system.

You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-4809.

Related Service Information Under 14 CFR Part 51

EADS CASA has issued Service Bulletin SB-235-26-0006, dated July 8, 2014. The service information describes procedures for modifying the engine fire detection system. 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 of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 24 airplanes of U.S. registry.

We also estimate that it would take about 75 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Required

parts would cost about \$1,577 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be \$190,848, or \$7,952 per product.

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Defense and Space S.A. (formerly known as Construcciones Aeronauticas, S.A.): Docket No. FAA-2015-4809; Directorate Identifier 2015-NM-012-AD.

(a) Comments Due Date

We must receive comments by December 28, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus Defense and Space S.A. (formerly known as Construcciones Aeronauticas, S.A.) Model CN-235-200 and CN-235-300 airplanes, certificated in any category, manufacturer serial numbers C-018 through C-211 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Reason

This AD was prompted by reports of false engine fire warning events, which consequently led to engine in-flight shut down. We are issuing this AD to prevent unnecessary in-flight-shutdown of an engine, which could result in reduced controllability of the airplane.

(f) Compliance

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

(g) Modification of Engine Fire Extinguishing/Detection System

Within 18 months after the effective date of this AD: Modify the location and routing of the engine fire detection system, in accordance with the Accomplishment Instructions of EADS CASA Service Bulletin SB-235-26-0006, dated July 8, 2014.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM-116, Transport

Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1112; fax 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or EADS CASA's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015-0011, dated January 20, 2015, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-4809.

(2) For service information identified in this AD, contact EADS-CASA, Military Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; email MTA.TechnicalService@casa.eads.net; Internet <http://www.eads.net>. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on October 30, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015-28560 Filed 11-10-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2015-4810; Directorate Identifier 2015-NM-090-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all

Airbus Model A330-200, -200 Freighter, and -300 series airplanes; and all Airbus Model A340-200, -300, -500, and -600 series airplanes. This proposed AD was prompted by a report of blockage of Angle of Attack (AOA) probes during climb, leading to activation of the Alpha Protection (Alpha Prot) while the Mach number increased. This activation could cause a continuous nose-down pitch rate that cannot be stopped with backward sidestick input, even in the full backward position. For certain airplanes, this proposed AD would require replacing certain AOA sensors (probes) with certain new AOA sensors. For certain other airplanes, this proposed AD would also require inspections and functional heat testing of certain AOA sensors for discrepancies, and replacement if necessary. We are proposing this AD to prevent erroneous AOA information and Alpha Prot activation due to blocked AOA probes, which could result in a continuous nose-down command and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by December 28, 2015.

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

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

For service information identified in this proposed AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email airworthiness.A330-A340@airbus.com; Internet <http://www.airbus.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

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-2015-4810; 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1138; fax 425-227-1149.

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-2015-4810; Directorate Identifier 2015-NM-090-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015-0134, dated July 8, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Airbus Model A330-200, -200 Freighter, and -300 series airplanes; and Model A340-200, -300, -500, and -600 series airplanes. The MCAI states:

An occurrence was reported where an Airbus A321 aeroplane encountered a blockage of two Angle of Attack (AOA) probes during climb, leading to activation of the Alpha Protection (Alpha Prot) while the

Mach number increased. The flight crew managed to regain full control and the flight landed uneventfully. It was determined that the affected AOA probes are also fitted on A330 and A340 aeroplanes.

When Alpha Prot is activated due to blocked AOA probes, the flight control laws order a continuous nose down pitch rate that, in a worst case scenario, cannot be stopped with backward sidestick inputs, even in the full backward position. If the Mach number increases during a nose down order, the AOA value of the Alpha Prot will continue to decrease. As a result, the flight control laws will continue to order a nose down pitch rate, even if the speed is above minimum selectable speed, known as VLS.

This condition, if not corrected, could result in loss of control of the aeroplane.

Investigation results indicated that aeroplanes equipped with certain UTC Aerospace (UTAS, formerly known as Goodrich) AOA sensors, or equipped with certain SEXTANT/THOMSON AOA sensors, appear to have a greater susceptibility to adverse environmental conditions than aeroplanes equipped with the latest Thales AOA sensor, Part Number (P/N) C16291AB, which was designed to improve AOA indication behaviour in heavy rain conditions.

Having determined that replacement of these AOA sensors is necessary to achieve and maintain the required safety level of the aeroplane, EASA issued AD 2015-0089, to require modification of the aeroplanes by replacement of the affected P/N sensors, and, after modification, prohibits (re-) installation of those P/N AOA sensors. That [EASA] AD also required repetitive detailed visual inspections (DET) and functional heating tests of certain Thales AOA sensors and provided an optional terminating action for those inspections.

Since EASA AD 2015-0089 was issued, based on further analysis results, Airbus issued Operators Information Transmission (OIT) Ref. 999.0017/15 Revision 1, instructing operators to speed up the removal from service of UTAS P/N 0861ED2 AOA sensors.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2015-0089, which is superseded, but reduces the compliance times for aeroplanes with UTAS P/N 0861ED2 AOA sensors installed.

You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-4810.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information:

- Service Bulletin A330-34-3215, Revision 02, dated March 29, 2010.
- Service Bulletin A330-34-3228, dated October 7, 2009.
- Service Bulletin A330-34-3315, dated March 26, 2015.
- Service Bulletin A340-34-4215, Revision 02, dated March 29, 2010.

- Service Bulletin A340-34-4234, dated October 7, 2009.
- Service Bulletin A340-34-4294, dated March 26, 2015.
- Service Bulletin A340-34-5062, Revision 01, dated March 29, 2010.
- Service Bulletin A340-34-5070, dated October 9, 2009.
- Service Bulletin A340-34-5105, dated March 26, 2015.

The service information describes procedures for replacing certain pitot probes with certain new pitot probes. The service information also describes procedures for inspections and

functional heat testing of certain pitot probes, and replacement if necessary. 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 of this NPRM.

FAA’s Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our

bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 55 airplanes of U.S. registry.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	5 work-hours × \$85 per hour = \$425	\$0	\$425	\$23,375
Inspection/test	3 work-hours × \$85 per hour = \$255	0	\$255 per inspection/test cycle	14,025

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA-2015-4810; Directorate Identifier 2015-NM-090-AD.

(a) Comments Due Date

We must receive comments by December 28, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes, certificated in any category, identified in

paragraphs (c)(1) and (c)(2) of this AD, all manufacturer serial numbers.

(1) Airbus Model A330-201, -202, -203, -223, -223F, -243, -243F, -301, -302, -303, -321, -322, -323, -341, -342, and -343 airplanes.

(2) Airbus Model A340-211, -212, -213, -311, -312, -313, -541, and -642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by a report of blockage of two Angle of Attack (AOA) probes during climb, leading to activation of the Alpha Protection (Alpha Prot) while the Mach number increased. This activation could cause a continuous nose-down pitch rate that cannot be stopped with backward sidestick input, even in the full backward position. We are issuing this AD to prevent erroneous AOA information and Alpha Prot activation due to blocked AOA probes, which could result in a continuous nose-down command and consequent loss of control of the airplane.

(f) Compliance

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

(g) Replacement of Certain UTAS AOA Sensors

For airplanes on which any UTAS AOA sensor having part number (P/N) 0861ED or P/N 0861ED2 is installed: At the applicable time specified in paragraph (h) of this AD, replace all Captain and First Officer AOA sensors (probes) having P/N 0861ED or 0861ED2 with AOA sensors having Thales P/N C16291AB, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(1) Airbus Service Bulletin A330-34-3315, dated March 26, 2015 (for Model A330 airplanes).

(2) Airbus Service Bulletin A340-34-4294, dated March 26, 2015 (for Model A340-200 and -300 airplanes).

(3) Airbus Service Bulletin A340-34-5105, dated March 26, 2015 (for Model A340-500 and -600 airplanes).

(h) Compliance Times for the Requirements of Paragraph (g) of This AD

Do the actions required by paragraph (g) of this AD at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD.

(1) For airplanes with AOA sensors having P/N 0861ED: Within 22 months after the effective date of this AD.

(2) For airplanes with AOA sensors having P/N 0861ED2: Within 7 months after the effective date of this AD.

(i) Replacement of Certain SEXTANT/THOMSON AOA Sensors

For airplanes on which any SEXTANT/THOMSON AOA sensor having P/N 45150320 is installed: Within 22 months after the effective date of this AD, replace all SEXTANT/THOMSON AOA sensors (probes) having P/N 45150320 with AOA sensors having Thales P/N C16291AB, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (i)(1) or (i)(2) of this AD.

(1) Airbus Service Bulletin A330-34-3228, dated October 7, 2009 (for Model A330-200 and -300 airplanes).

(2) Airbus Service Bulletin A340-34-4234, dated October 7, 2009 (for Model A340-200 and -300 airplanes).

(j) Repetitive Inspections/Tests of Certain Thales AOA Sensors

For airplanes on which one or more Thales AOA sensor having P/N C16291AA is installed: Before the accumulation of 17,000 total flight hours on the AOA sensor since first installation on an airplane, or within 6 months after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 3,800 flight hours; do a detailed inspection of the three AOA sensors at FINs 3FP1, 3FP2, and 3FP3 for discrepancies (e.g., the vane of the sensor does not deice properly), and a functional heating test of each AOA sensor having P/N C16291AA, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (j)(1), (j)(2), or (j)(3) of this AD.

(1) Airbus Service Bulletin A330-34-3215, Revision 02, dated March 29, 2010 (for Model A330-200 and -300 airplanes).

(2) Airbus Service Bulletin A340-34-4215, Revision 02, dated March 29, 2010 (for Model A340-200 and -300 airplanes).

(3) Airbus Service Bulletin A340-34-5062, Revision 01, dated March 29, 2010 (for Model A340-500 and -600 airplanes).

(k) Corrective Actions

If any discrepancy is found during any inspection required by paragraph (j) of this AD, or if any test is failed during the heating test required by paragraph (j) of this AD: Before further flight, replace all affected AOA sensors with sensors identified in paragraph (k)(1) or (k)(2) of this AD, in accordance with the Accomplishment Instructions of the

applicable service information identified in paragraph (j)(1), (j)(2), or (j)(3) of this AD.

(1) Replace with AOA sensors having Thales P/N C16291AA, on which the inspection and test required by paragraph (j) of this AD were passed.

(2) Replace with AOA sensors having Thales P/N C16291AB.

(l) Airplanes Excluded From Certain Requirements

(1) The actions specified in paragraphs (g), (i), (j), and (k) of this AD are not required, provided that the conditions specified in paragraphs (l)(1)(i), (l)(1)(ii), and (l)(1)(iii) of this AD are met.

(i) Airbus Modification 58555 (installation of Thales P/N C16291AB AOA sensors) has been embodied in production.

(ii) Airbus Modification 46921 (installation of UTAS AOA sensors) has not been embodied in production.

(iii) No AOA sensor having SEXTANT/THOMSON P/N 45150320 or UTAS P/N 0861ED or P/N 0861ED2 has been installed on the airplane since date of issuance of the original airworthiness certificate or date of issuance of the original export certificate of airworthiness.

(2) The actions specified in paragraphs (g) and (i) of this AD are not required, provided that all conditions specified in paragraphs (l)(2)(i), (l)(2)(ii), and (l)(2)(iii) of this AD are met.

(i) Only AOA sensors with P/Ns approved after the effective date of this AD have been installed.

(ii) The AOA sensor P/N is approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(iii) The installation is accomplished in accordance with airplane modification instructions approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; the EASA; or Airbus's EASA DOA.

(m) Optional Terminating Modification

Replacement of all Thales AOA sensors having P/N C16291AA with Thales AOA sensors having P/N C16291AB, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (m)(1), (m)(2), or (m)(3) of this AD, terminates the repetitive inspections and functional heating tests required by paragraph (j) of this AD.

(1) Airbus Service Bulletin A330-34-3228, dated October 7, 2009 (for Model A330-200 and -300 airplanes).

(2) Airbus Service Bulletin A340-34-4234, dated October 7, 2009 (for Model A340-200 and -300 airplanes).

(3) Airbus Service Bulletin A340-34-5070, dated October 9, 2009 (for Model A340-500 and -600 airplanes).

(n) Parts Installation Prohibitions

(1) For airplanes on which only Thales P/N C16291AB AOA sensors are installed as of the effective date of this AD: No person may install, on any airplane, a Thales AOA sensor having P/N C16291AA as of the effective date of this AD.

(2) For airplanes on which the modification specified in paragraph (m) of this AD has been done: No person may install, on any airplane, a Thales AOA sensor having P/N C16291AA after accomplishing the specified modification.

(3) For airplanes on which Thales P/N C16291AA or P/N C16291AB AOA sensors are installed as of the effective date of this AD: No person may install, on any airplane, a UTAS AOA sensor having P/N 0861ED or P/N 0861ED2, or a SEXTANT/THOMSON AOA sensor having P/N 45150320, as of the effective date of this AD.

(4) For airplanes on which the replacement required by paragraph (i) of this AD has been done: No person may install, on any airplane, a UTAS AOA sensor having P/N 0861ED or P/N 0861ED2, or a SEXTANT/THOMSON AOA sensor having P/N 45150320, after accomplishing the replacement.

(5) For airplanes on which the replacement required by paragraph (g) of this AD has been done: No person may install, on any airplane, a UTAS AOA sensor having P/N 0861ED or P/N 0861ED2, or a SEXTANT/THOMSON AOA sensor having P/N 45150320, after accomplishing the replacement, except that a UTAS AOA sensor having P/N 0861ED may be installed in the standby position of that airplane.

(o) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1138; fax 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(p) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015-0134, dated July 8, 2015, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by

searching for and locating Docket No. FAA–2015–4810.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email airworthiness.A330-A340@airbus.com; Internet <http://www.airbus.com>. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on October 30, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–28559 Filed 11–10–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4212; Directorate Identifier 2015–NM–010–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes. This proposed AD was prompted by reports of cracking of the main fitting of the nose landing gear (NLG) and a determination that a new safe-life limitation for affected NLG main fittings has not been mandated. This proposed AD would require replacing affected NLG main fittings that have exceeded the safe-life limitation with a new or serviceable fitting. We are proposing this AD to prevent collapse of the NLG, which if not corrected, could lead to degradation of direction control on the ground or an un-commanded turn to the left, and a consequent loss of control of the airplane on the ground, possibly resulting in damage to the airplane and injury to occupants.

DATES: We must receive comments on this proposed AD by December 28, 2015.

ADDRESSES: You may send comments, using the procedures found in 14 CFR

11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email RApublications@baesystems.com; Internet <http://www.baesystems.com/Businesses/RegionalAircraft/index.htm>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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–2015–4212; 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149.

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–2015–4212; Directorate Identifier 2015–NM–010–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2012–0191R1, dated November 6, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all BAE Systems (Operations) Limited Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes. The MCAI states:

Several occurrences of the aeroplane’s Nose Landing Gear (NLG) Main Fitting cracking have been reported. Subsequently in different cases, NLG Main Fitting crack lead to collapsed NLG, locked NLG steering and an aeroplane’s un-commanded steering to the left.

Cracks in the NLG Bell Housing are not detectable with the NLG fitted to the aeroplane and are difficult to detect during overhaul without substantial disassembly of the gear.

This condition, if not corrected, could lead to degradation of directional control on the ground or an un-commanded turn to the left and a consequent loss of control of the aeroplane on the ground, possibly resulting in damage to the aeroplane and injury to occupants.

Prompted by these findings, BAE Systems (Operations) Ltd issued Inspection Service Bulletin (ISB) 32–186 (hereafter referred to as the ISB) to introduce a new safe life of 16,000 flight cycles (FC) for certain NLG main fittings, having a Part Number (P/N) as identified in Paragraph 1A, tables 1, 2 and 3 of the ISB.

To correct this unsafe condition, EASA issued [EASA] AD 2012–0191 to require implementation of the new safe-life limitation for the affected NLG main fittings and replacement of fittings that have already exceeded the new limit.

* * * * *

You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2015–4212.

Related Service Information Under 1 CFR Part 51

BAE Systems (Operations) Limited has issued Inspection Service Bulletin ISB.32-186, dated April 12, 2012. This service information describes procedures for determining the compliance times for replacing the NLG main fittings. 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 of this NPRM.

Related Rulemaking

On August 4, 2014, we issued AD 2014-16-18, Amendment 39-17942 (79 FR 51234, August 28, 2014). AD 2014-16-18 requires revising the maintenance program by incorporating a new safe-life limitation for the NLG main fitting on all BAE Systems (Operations) Limited Model BAe 146 series airplanes and Model Avro 146-RJ series airplanes. Since we issued AD 2014-16-18, Amendment 39-17942 (79 FR 51234, August 28, 2014), we have determined that the new safe-life limitation for affected NLG main fittings has not been mandated because the safe-life limitation was not incorporated in Subject 05-10-15, Aircraft Equipment Airworthiness Limitations, of Section 05-10, Time Limits, of Chapter 05, Time Limits/Maintenance Checks, of the BAE Systems (Operations) Limited BAe 146 Series/Avro 146-RJ Series Aircraft Maintenance Manual, Revision 108, dated September 14, 2012 (which was referred to as the appropriate source of service information for incorporating the safe-life limitation into the maintenance or inspections program). Therefore, the FAA has determined that it is necessary to require the replacement of NLG main fittings that have exceeded the safe-life limitation with a new or serviceable fitting.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 4 airplanes of U.S. registry.

We also estimate that it would take about 36 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Required parts would cost \$81,000 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be \$336,240, or \$84,060 per product.

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited: Docket No. FAA-2015-4212; Directorate Identifier 2015-NM-010-AD.

(a) Comments Due Date

We must receive comments by December 28, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to BAE Systems (Operations) Limited Model BAe 146-100A, -200A, and -300A airplanes; and Model Avro 146-RJ70A, 146-RJ85A, and 146-RJ100A airplanes; certificated in any category, all models, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by reports of cracking of the main fitting of the nose landing gear (NLG) and a determination that a new safe-life limitation for affected NLG main fittings has not been mandated. We are issuing this AD to prevent collapse of the NLG, which if not corrected could lead to degradation of direction control on the ground or an uncommanded turn to the left, and a consequent loss of control of the airplane on the ground, possibly resulting in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Repetitive Replacement of Nose Landing Gear (NLG) Main Fitting

At the applicable compliance time specified in paragraphs (g)(1) through (g)(4) of this AD: Replace each affected nose landing gear (NLG) main fitting, having a part number (P/N) as identified in paragraph 1.A, tables 1., 2., and 3. of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.32-186, dated April 12, 2012, in accordance with the Accomplishment Instructions of that BAE Systems (Operations) Limited Inspection Service Bulletin ISB.32-186, dated April 12, 2012.

Thereafter, before the accumulation of 16,000 flight cycles on any affected NLG main fitting having a part number as identified in paragraph 1.A, tables 1., 2., and 3. of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.32-186, dated April 12, 2012, replace each affected nose landing gear (NLG) main fitting, in accordance with the Accomplishment Instructions of that BAE Systems (Operations) Limited Inspection Service Bulletin ISB.32-186, dated April 12, 2012.

(1) For NLG main fittings that have accumulated 29,000 flight cycles or more since first installation on an airplane: Within 12 months after the effective date of this AD.

(2) For NLG main fittings that have 20,000 flight cycles or more but less than 29,000 flight cycles since first installation on an airplane: Within 24 months after the effective date of this AD.

(3) For NLG main fittings that have 16,000 flight cycles or more but less than 20,000 flight cycles since first installation on an airplane: Within 36 months after the effective date of this AD.

(4) For NLG main fittings that have accumulated less than 16,000 flight cycles since first installation on an airplane: Before accumulating 16,000 flight cycles since first installation on an airplane or within 36 months after the effective date of this AD, whichever occurs later.

(h) Parts Installation Limitation

As of the effective date of this AD, no person may install an NLG main fitting having a part number identified in paragraph 1.A., Tables 1., 2., and 3., of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.32-186, dated April 12, 2012, unless that fitting is in compliance with the requirements of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1175; fax 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM-

116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or BAE Systems (Operations) Limited's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2012-0191R1, dated November 6, 2012, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-4212.

(2) For service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email RAPublications@baesystems.com; Internet <http://www.baesystems.com/Businesses/RegionalAircraft/index.htm>. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on October 30, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015-28561 Filed 11-10-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA-2014-N-1207]

Use of the Term "Natural" in the Labeling of Human Food Products; Request for Information and Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of request for comments.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the establishment of a docket to receive information and comments on the use of the term "natural" in the labeling of human food products, including foods that are genetically engineered or contain ingredients produced through the use of genetic engineering. We are taking this action in part because we received three citizen petitions asking that we define

the term "natural" for use in food labeling and one citizen petition asking that we prohibit the term "natural" on food labels. We also note that some Federal courts, as a result of litigation between private parties, have requested administrative determinations from FDA regarding whether food products containing ingredients produced using genetic engineering or foods containing high fructose corn syrup may be labeled as "natural." We are working with the United States Department of Agriculture (USDA) Agricultural Marketing Service and Food Safety and Inspection Service to also examine the use of the term "natural" in meat, poultry, and egg products, and are considering areas for coordination between FDA and USDA. We invite public comment on the term "natural" in the context of food labeling and on specific questions contained in this document.

DATES: Comments must be received on or before February 10, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://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 <http://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):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, 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 Docket No. FDA-2014-N-1207 for “Use of the Term “Natural” in the Labeling of Human Food Products; Request for Information and Comments.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management 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 <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. 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: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://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 Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Loretta Carey, Center for Food Safety and Applied Nutrition (HFS-820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240-402-2371.

SUPPLEMENTARY INFORMATION:

I. Background

A. What has been FDA’s position regarding the use of the term “natural?”

Under section 403(a)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 343(a)(1)), a food shall be deemed to be misbranded if its labeling is false or misleading in any particular. Section 201(f) of the FD&C Act (21 U.S.C. 321(f)) defines the term “food” to mean articles used for food or drink for man or other animals, chewing gum, and articles used for components of any such article. Subject to certain exceptions, dietary supplements are generally considered to be foods under the FD&C Act (21 U.S.C. 321(ff)). Section 201(n) of the FD&C Act (21 U.S.C. 321(n)) provides that labeling is misleading if, among other things, it fails to reveal facts that are material in light of representations made or suggested in the labeling, or material with respect to consequences that may result from the use of the food to which the labeling relates under the conditions of use prescribed in the labeling, or under such conditions of use as are customary or usual. Section 201(m) of the FD&C Act defines “labeling” as all labels and other written, printed, or graphic matter upon any article or any of its containers or wrappers or accompanying such article.

We have a longstanding policy for the use of the term “natural” on the labels of human food. We previously considered establishing a definition for the term “natural” when used in food labeling. In the preamble of a proposed rule we published in the **Federal Register** (56 FR 60421, November 27, 1991), we stated that the word “natural” is often used to convey that a food is composed only of substances that are not manmade and is, therefore, somehow more wholesome. We also said that we have not attempted to restrict use of the term “natural” except for added color, synthetic substances, and flavors under § 101.22 (21 CFR 101.22) (56 FR 60421 at 60466). Further, we said that we have considered “natural” to mean that nothing artificial or synthetic (including colors regardless of source) is included in, or has been added to, the product that would not normally be expected to be there (56 FR 60421 at 60466).

We also noted that the term “natural” is used on a variety of products to mean a variety of things. Because of its widespread use, and the evidence that consumers regard many uses of this term as non-informative, we said, back in 1991, that we were considering establishing a definition for this term (56 FR 60421 at 60466). We said that we believed that defining the term “natural” could remove some ambiguity surrounding use of the term that results in misleading claims (56 FR 60421 at 60466).

We invited comments on several questions, including whether we should establish a meaningful definition for “natural” so that this term would have a common consumer understanding, and whether it should prohibit “natural” claims entirely on the grounds that they are false or misleading (56 FR 60421 at 60467). In the preamble to the subsequent final rule, we noted that we had received many comments on the subject, but that “[n]one of the comments provided FDA with a specific direction to follow for developing a definition regarding the use of the term ‘natural.’” (58 FR 2302 at 2407, January 6, 1993). We stated that at that time we would not be engaging in rulemaking to define “natural,” but that we would maintain our policy not to restrict the use of the term “natural” except for added color, synthetic substances, and flavors. We further stated that we would maintain our policy to interpret the term “natural” as meaning that “nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in the food” (58 FR 2302 at 2407).

When we established our policy concerning the use of the term “natural,” as described previously in this document, it was not intended to address food production methods, such as the use of genetic engineering or other forms of genetic modification, the use of pesticides, or the use of specific animal husbandry practices, nor did it explicitly address food processing or manufacturing methods, such as thermal technologies, pasteurization, or irradiation. Furthermore, we did not consider whether the term “natural” should describe any nutritional or other health benefit.

B. What recent events prompted FDA to request comment?

In a citizen petition (now filed under docket number FDA-2014-P-0312) dated March 14, 2014, the Grocery Manufacturers Association (GMA) requests that we “issue a regulation

authorizing statements such as ‘natural’ on foods that are or contain foods derived from biotechnology” (see Citizen Petition from the Grocery Manufacturers Association to the Food and Drug Administration (“Petition”) at page 1). Specifically, GMA requests that we issue a regulation “that it is neither false nor misleading to label a food as ‘natural’ or similar terms solely because the food is or contains a food derived from biotechnology” (Petition at page 3). GMA requests that FDA issue a regulation establishing that the term(s) “natural,” “all natural,” “100% natural,” “from nature,” “naturally grown,” or “naturally sourced” may accompany the common or usual name of a food, or the name of a standardized food, or appear elsewhere on the label or in labeling of such foods, and that such a food shall not be deemed to be misbranded solely because the food contains a food derived from biotechnology (Petition at page 3).

Alternatively, GMA requests that we amend § 101.4 (*Food; designation of ingredients.*) by adding a new paragraph stating that: A food bearing a claim that its ingredient or ingredients are “natural,” “all natural,” “100% natural,” “from nature,” “naturally grown,” or “naturally sourced” shall not be deemed misbranded solely because the ingredient or ingredients are derived from biotechnology (Petition at page 3, footnote 2). The GMA citizen petition also describes, in the petitioner’s view, the legal and factual basis for a regulation and why rulemaking is in the public interest (see Petition at pages 5 through 15).

The GMA citizen petition follows earlier communications to FDA regarding the use of the term “natural” on the labels of food containing ingredients produced using genetic engineering. For example, three Federal district courts referred to us, for an administrative determination under 21 CFR 10.25(c), the question of whether food products containing ingredients produced using bioengineering may be labeled as “Natural,” “All Natural,” and/or “100% Natural.” See Letter from Leslie Kux, Assistant Commissioner for Policy, to the Honorable Yvonne Gonzales Rogers, U.S. District Court, Northern District of California, the Honorable Jeffrey S. White, U.S. District Court, Northern District of California, and the Honorable Kevin McNulty, U.S. District Court, District of New Jersey (January 6, 2014) (“Courts Letter”); see also Letter from Karin F. R. Moore, Vice President and General Counsel, Grocery Manufacturers Association, to Elizabeth H. Dickinson, Esq., Chief Counsel, FDA (December 5, 2013) (mentioning the

district courts’ referrals to FDA and stating that FDA has authority to issue a regulation authorizing foods containing ingredients derived from biotechnology to be labeled “natural”). Although we declined to make a determination for the courts regarding whether and under what circumstances food products containing ingredients produced using genetic engineering may or may not be labeled “natural,” we informed the courts that, if we were inclined to revoke, amend, or revise our policy regarding use of the term “natural,” we would likely engage in a public process and work with other Federal entities, such as the U.S. Department of Agriculture (USDA) (see Courts Letter at page 2). We issued a similar response to a Federal district court, in 2010, when it asked whether high fructose corn syrup qualified as a “natural” ingredient. See Letter from Michael M. Landa, Acting Director, Center for Food Safety and Applied Nutrition, to the Honorable Jerome B. Simandle, U.S. District Court Judge, District of New Jersey (September 16, 2010).

On October 3, 2014, we received a citizen petition from Consumers Union (see FDA–2014–P–1650) requesting that we prohibit use of the term “natural” on food labels altogether. The Consumers Union citizen petition asserts that there is a “drastic” difference between FDA’s current policy for use of the term “natural” and “what people think the ‘natural’ label should mean” (Citizen Petition from the Consumers Union to FDA (“Petition”) at page 1). More specifically, Consumers Union requests that FDA issue the following interpretive rule prohibiting use of the term “natural” in food labeling: “*The term ‘natural,’ or any derivation of the term, such as ‘naturally grown,’ ‘naturally sourced’ or ‘from nature,’ is vague and misleading and should not be used*” [emphasis in the original] (see Petition at page 3).

The Consumers Union citizen petition relies on Consumer Reports National Research Center survey data to support its position that consumers are misled by the term “natural.”¹ According to the petition, the survey suggests that nearly two-thirds of U.S. consumers are currently misled by use of the term “natural” on certain food labels and nearly 90 percent expect it to “mean much more than it does” (see Petition at page 2 and pages 4 through 9). For

¹ Consumer Reports National Research Center Survey Research Report re Citizen Petition from Consumers Union, FDA–2014–P–1650–0002. According to Consumers Union, the survey was a nationally representative phone survey of over 1000 adult U.S. residents.

example, according to the petition, “Sixty-six percent of consumers think ‘natural’ processed food products mean no toxic pesticides were used, 66% think no artificial ingredients or colors were used, 65% think no chemicals were used during processing and 64% think no GMOs were used” (see Petition at page 2). Also, according to the petition, when consumers were asked what they thought the term natural should mean, “87% believe no artificial materials or chemicals should be used during processing, 86% believe no artificial ingredients or colors should be used, 86% believe no toxic pesticides should be used, and 85% believe no GMOs should be used” (see Petition at page 2).

Consumers Union asserts that it has observed a push from industry to allow the use of the term “natural” on food labels that do not represent what their survey indicates consumers believe the term natural should mean (see Petition at page 3). Consumers Union further states that “consumers demand far more from the ‘natural’ label, in line with what they expect from the ‘organic’ label” such that the term “natural” in food labeling “should be banned altogether” (see Petition at page 3).

We also have received two other citizen petitions concerning the use of the term “natural” on food labels. One citizen petition, from the Sara Lee Corp. (see FDA–2007–P–0007), asks that we work with USDA’s Food Safety Inspection Service (FSIS) to devise and adopt a unified policy, as a statement of policy, governing use of the term “natural” such that use of the term “natural” may be used to describe a food or food ingredient that does not contain any artificial flavor or flavoring, coloring ingredient (regardless of source), or any artificial or synthetic ingredient that is included within or not normally expected in the product (see Petition at page 2). Further, the Sara Lee Corp. asserts that the degree of processing necessary to produce the food or food ingredient should be considered in determining consumer expectation.

Another citizen petition, submitted by The Sugar Association (see FDA–2006–P–0206), asks that we engage in rulemaking to define the term “natural” with respect to food and beverages. The citizen petition asks for consistency across Federal Agencies with respect to such definition and requests that we define the term “natural” based on FSIS’s definition in its Food Standards and Labeling Policy Book for “natural” claims for meat products and poultry products (see Petition at page 1).

The definition of “natural claims” in the FSIS’s Food Standards and Labeling Policy Book, in relevant part, states that the term “natural” may be used on labeling for meat products and poultry products if the applicant for such labeling demonstrates that: (1) The product does not contain any artificial flavor or flavoring, coloring ingredient, chemical preservative (as defined in § 101.22), or any other artificial or synthetic ingredient and (2) the product and its ingredients are not more than minimally processed. The FSIS Food Standards and Labeling Policy Book further explains that minimal processing may include traditional processes used to make food edible or to preserve it or to make it safe for human consumption, *e.g.*, smoking, roasting, freezing, drying, and fermenting or physical processes which do not fundamentally alter the raw product and/or which only separate a whole, intact food into component parts, *e.g.*, grinding meat, separating eggs into albumen and yolk, and pressing fruits to produce juices. The FSIS Food Standards and Labeling Policy Book also states that relatively severe processes, such as solvent extraction, acid hydrolysis, and chemical bleaching, would be considered more than minimal processing, so the use of a natural flavor or flavoring in compliance with § 101.22 that has undergone more than minimal processing would place a product in which it is used outside the scope of the FSIS guidelines. However, the FSIS Food Standards and Labeling Policy Book states that the presence of an ingredient that has been more than minimally processed would not necessarily preclude the product from being promoted as natural, and that exceptions may be granted on a case-by-case basis if it can be demonstrated that the use of such an ingredient would not significantly change the character of the product to the point that it could no longer be considered a natural product. In such cases, the natural claim is to be qualified to clearly and conspicuously identify the ingredient, *e.g.*, “all natural or all natural ingredients except dextrose, modified food starch, etc.”

The FSIS Food Standards and Labeling Policy Book also states that all products claiming to be natural or a natural food should be accompanied by a brief statement that explains what is meant by the term natural, *i.e.*, that the product is a natural food because it contains no artificial ingredients and is only minimally processed. The statement is to appear directly beneath or beside all natural claims or, if

elsewhere on the principal display panel, an asterisk should be used to tie the explanation to the claim.

Moreover, the FSIS Food Standards and Labeling Policy Book specifies that FSIS’s decision to approve or deny use of a natural claim may be affected by the specific context in which the claim is made. The FSIS Food Standards and Labeling Policy Book contains an example showing that claims indicating that a product is natural food, *e.g.*, “Natural chili” or “chili—a natural product” would be unacceptable for a product containing beet powder, which artificially colors the finished product, but states that a claim such as “all natural ingredients” might be an acceptable claim for such a product (see Food Standards and Labeling Policy Book, FSIS, at 116, August 2005).

Both the Sara Lee Corp. and The Sugar Association citizen petitions also state that defining or establishing a policy on “natural” would provide consistency for consumers and food manufacturers.

II. Request for Comments and Information

We invite interested persons to comment on the use of the term “natural” in the labeling of human food products, including when, if ever, the use of the term is false or misleading (FDA–2014–N–1207). We are particularly interested in responses to the following questions:

- Should we define, through rulemaking, the term “natural?” Why or why not?
- Should we prohibit the term “natural” in food labeling? Why or why not?
- If we define the term “natural,” what types of food should be allowed to bear the term “natural?”
- Should only raw agricultural commodities be able to bear the term? Why or why not? Section 201(r) of the FD&C Act defines the term “raw agricultural commodity” as “any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.”
- Should only single ingredient foods, *e.g.*, bottled water or bagged spinach, be able to bear the term? Why or why not?
- If multi-ingredient foods should be able to bear the term, what type(s) of ingredients would disqualify the food from bearing the term? Please explain why such disqualification would be warranted.
- We are interested in any data or other information to suggest that consumers associate, confuse, or

compare the term “natural” with “organic” (the USDA Agricultural Marketing Service administers the National Organic Program, which enforces laws and regulations regarding certified organic foods). We are interested in data and other information about consumers’ understanding of foods labeled “natural” versus “organic.” Is the term “natural” on food labels perceived by consumers the same way as “organic?” Or is “natural” perceived by consumers to be “better” (or not as good as) “organic?” Please provide consumer research or other evidence to support your comment.

- If we were to revise our policy regarding the use of the term “natural” or engage in rulemaking to establish a regulatory definition for “natural,” should certain production practices used in agriculture, for example, genetic engineering, mutagenesis, hybridization, the use of pesticides, or animal husbandry practices, be a factor in defining “natural?” Why or why not?

- We are interested in any data or other information to suggest that consumers associate, confuse, or compare the term “natural” with “healthy.” We have a regulation that defines the term “healthy” when used as an implied nutrient content claim with specific conditions related to the food’s nutrient profile that must be met in order to use the term on the label or in labeling of a food (see § 101.65(d)). We are interested in data and other information about consumers’ understanding of foods labeled “natural” versus “healthy.” Is the term “natural” on food labels perceived by consumers the same way as “healthy?” Or is “natural” perceived by consumers to be “better” (or not as good as) “healthy?” Do consumers view “natural” and “healthy” as synonymous terms? Please provide consumer research or other evidence to support your comment.

- Should manufacturing processes be considered in determining when a food can bear the term “natural?” For example, should food manufacturing processes, such as drying, salting, marinating, curing, freezing, canning, fermenting, pasteurizing, irradiating, or hydrolysis, be a factor in defining “natural?”

- Should the term “natural” only apply to “unprocessed” foods? If so, how should “unprocessed” and “processed” be defined for purposes of bearing the claim? If the term natural should include some processing methods, what should those methods be? In making determinations related to processing, should one look at the process to make a single ingredient of a

food, or does one evaluate the process done to the formulated finished food product (or both)?

- The current policy regarding use of the term “natural” hinges in part on the presence or absence of synthetic ingredients. For example, under the current policy synthetic forms of Vitamin D would not be used in a food claiming to be “natural,” whereas naturally sourced Vitamin D (*e.g.*, from salmon or egg yolks) could be. Should the manner in which an ingredient is produced or sourced affect whether a food containing that ingredient may be labeled as “natural?” Please explain your reasoning.

- What can be done to ensure that consumers have a consistent and accurate understanding of the term “natural” in food labeling to ensure that it is not misleading?

- What are the public health benefits, if any, of defining the term “natural” in food labeling? Please provide supporting data and other information to support your comment.

- Should “natural” have some nutritional benefit associated with it? If so, what should be the benefit? What nutrients should be considered? What data are available to support the association between “natural” and a given nutritional benefit, and/or between “natural” and certain nutrients?

- How might we determine whether foods labeled “natural” comply with any criteria for bearing the claim?

Dated: November 6, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015-28779 Filed 11-10-15; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AP06

Ensuring a Safe Environment for Community Residential Care Residents

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) regulations governing the approval of a community residential care facility (CRC). We would prohibit a CRC from employing an individual who has been convicted in a court of law of certain listed crimes against a person or property, or has had a finding entered into an applicable state registry

or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of property. VA also proposes to require CRCs to develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property. The proposed rule would also require CRCs to report and investigate any allegations of abuse or mistreatment. In addition, the proposed rule would require the CRC to screen and monitor individuals who are not CRC residents, but have direct access to a veteran living in a CRC. The revisions would improve the safety and help prevent the neglect or abuse of veteran residents in CRCs. In addition, we propose to amend the rule regarding the maximum number of beds allowed in a resident’s bedroom.

DATES: *Comment Date:* Comments must be received by VA on or before January 11, 2016.

ADDRESSES: Written comments may be submitted through www.regulations.gov; by mail or hand-delivery to the Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AP06—Ensuring a Safe Environment for Community Residential Care Residents.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Allman, Chief Consultant, Geriatrics and Extended Care Services (10P4G), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 461-6750. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA is authorized under 38 U.S.C. 1730 to assist veterans by referring them for placement, and aiding veterans in obtaining placement, in CRCs. A CRC is a form of enriched housing that provides health care supervision to eligible veterans not in need of hospital or nursing home care, but who, because of medical, psychiatric and/or

psychosocial limitations as determined through a statement of needed care, are not able to live independently and have no suitable family or significant others to provide the needed supervision and supportive care. Examples of CRC’s enriched housing may include, but are not limited to: Medical Foster Homes, Assisted Living Homes, Group Living Homes, Family Care Homes, and psychiatric CRC Homes. CRC care consists of room, board, assistance with activities of daily living (ADL), and supervision as required on an individual basis. The size of a CRC can vary from one bed to several hundred. VA maintains a list of approved CRCs. The cost of community residential care is financed by the veteran’s own resources. A veteran may elect to reside in any CRC he or she wants; however, VA will only recommend CRCs that apply for approval and meet VA’s standards. Once approved, the CRC is placed on VA’s referral list and VA refers veterans for whom CRC care is an option to the VA-approved CRCs when those veterans are determining where they would like to live. VA may provide care to a veteran at the CRC when it is medically appropriate to provide such home-based care. The provision of such home-based care is not contingent upon VA approval of a CRC; a veteran’s right to such care exists independent of the veteran’s residence in a CRC. Employees of the CRC are not VA employees, and no employment relationship exists between employees of the CRC and VA. To become approved, a CRC must meet the specified criteria in 38 CFR 17.63, which sets forth standards relating to the physical integrity of the facility, the health care provided at the CRC, the standard of living therein, costs charged directly to veteran residents of the CRC, and other criteria for approval.

VA has authority under 38 U.S.C. 1730(b)(2) to establish criteria for approval of a CRC that will ensure the health, safety and welfare of veterans residing in that facility. Current § 17.63(j) requires CRCs to maintain sufficient, qualified staff on duty who are available to care for residents and ensure the health and safety of each resident. The CRC provider and staff must have adequate education, training, or experience to maintain the facility. However, VA believes that other issues are also important in determining whether a veteran residing in a CRC is receiving an appropriate standard of care. A veteran residing in a CRC is unable to live independently and has no suitable family or significant others to provide the needed supervision and supportive care, and the CRC serves as

that veteran's primary place of residence. VA believes that the CRC should be an environment in which the veteran is physically safe and where the veteran is not at risk of damage, theft, or loss of personal property. To ensure the safety and welfare of veterans residing in CRCs, VA proposes to establish standards that will require CRCs to investigate individuals in CRCs who have direct access to veteran residents and/or veteran resident property.

VA considered several approaches to address the issue of the background and behavior of individuals in CRCs. For example, on the national level, the Patient Protection and Affordable Care Act, Public Law 111-148, established a state grant program for conducting federal and state criminal background checks on direct patient access employees of long-term care facilities and providers that accept Medicare and Medicaid patients (42 U.S.C. 1320a-71). However, not all states participate and it is applicable to only long-term care facilities. A survey of approved CRCs reflects that only a small percentage of those facilities are approved to accept Medicare or Medicaid patients. Another Medicare statute, 42 U.S.C. 1320a-7, excludes an individual from participating in any federal health care program if that individual has been convicted of certain listed crimes. However, a person working in a CRC, or an individual with direct resident access, would not be considered a participant in a federal health care program.

Employees, contractors and volunteers working in VA-operated facilities, such as community living centers or nursing homes, must undergo a background screening as required by Office of Personnel Management (OPM) regulations at 5 CFR parts 731 and 736. If the employee or contractor has access to federally maintained records or databases, the level of scrutiny is greater. CRC staff and others with direct resident access are not federal employees, contractors or volunteers, and do not have access to VA records or databases. Therefore, OPM's federal background screening requirements are inapplicable.

We reviewed state requirements for licensing residential care facilities as well as state screening requirements for employment to work with the elderly or disabled. The states vary in how these issues are addressed. Some require licensing only for facilities that have a minimum number of beds (*i.e.*, five or more beds). Many of the VA-approved CRCs have one to three resident beds. Some state laws and regulations do not

use the term "residential care facility" and it is unclear whether a VA-approved CRC would be covered. Several state licensing laws or regulations do not address hiring requirements. Some do not have any general screening requirements for individuals assigned to duties caring for the elderly or disabled. In those states that do have screening requirements, the level of screening varies from criminal history checks at the county or state level only, to both state and federal-level checks.

While state laws vary on the requirement for background screenings on individuals working with the elderly or disabled, all states maintain a long-term care ombudsman program charged with investigating reports of elder abuse. In addition, all states maintain registries for licensed health care professionals such as nurses and nurse aides to track reports of patient abuse or neglect. However, many individuals employed in a VA approved CRC are not licensed health care professionals and states do not maintain any type of registry that would capture information pertaining to all the types of CRC employees.

Due to these variations, we do not believe we can rely on state law to ensure that veterans can trust and rely on VA-recommended CRCs to provide a certain, uniform minimum level of safety and care. VA believes that all veterans residing in a CRC should have the same level of assurance that a CRC staff member or other covered individual does not have a criminal history, regardless of where that facility is located.

In considering possible national standards, we reviewed existing regulations governing other VA programs. State Veterans Homes are owned, operated, and managed by state governments and provide nursing home, domiciliary, or adult day care to eligible veterans. Regulations governing State Veterans Homes are found at 38 CFR parts 51 through 59. We believe that the State Veterans Home program is meaningfully similar to the community residential care program because it serves a similar veteran population and provides similar services; however, there are two important differences. A State Veterans Home is owned, operated and managed by the state government while a CRC is a privately owned entity. States exercise a layer of control over State Veterans Homes that is not present in CRCs. In addition, persons living in some CRCs who are not obtaining services from that facility regularly interact with CRC residents and sometimes provide services to

residents. State Veterans Homes provide resident services through employees of the state home, many of which are professionals licensed by the state. Nonetheless, VA believes it is appropriate to look to how resident safety and welfare is addressed in the State Veterans Homes program as a guide on how to proceed in the CRC program.

We propose to amend § 17.63 by adding a new paragraph (j)(3) which would require the CRC to develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property. This would ensure that each facility has a policy in place to address these issues. In addition, it would serve to inform both employees and CRC residents of the prohibited practices and inform CRC residents about procedures for reporting alleged mistreatment, neglect, and abuse of residents and misappropriation of resident property.

Proposed paragraph (j)(3)(i)(A)(1) would prohibit the CRC from employing an individual who has been convicted by a court of law of abusing, neglecting, or mistreating individuals. VA published a similar rule at § 51.90(c) for State Veterans Homes. That rule has been in place since February 7, 2000, and we believe it has been effective in ensuring the safety of veterans residing in those facilities. We believe a similar standard should be applied to employment in CRCs. The terms "abuse" and "neglect" are defined in § 51.90(b), and would have the same meaning here.

Proposed paragraph (j)(3)(i)(A)(2) would prohibit the CRC from employing individuals who have had a finding entered into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of property. Examples of applicable state registries include, but are not limited to, state sex offender registries and registries of criminal offenders which are maintained by some states. Typical licensing authorities include, but are not limited to, state boards or agencies that license or certify Registered Nurses (RN), Licensed Practical Nurses (LPN), Certified Nursing Assistants (CNA), nursing aides or medication aides. State laws and regulations typically require employers to report abuse, neglect, mistreatment of individuals or misappropriation of property alleged to have been committed by certain licensed health care professionals. These reports are made part of the relevant State registry, and the registry may contain

information on incidents that were not forwarded to law enforcement for prosecution. VA believes that such information would be relevant to the issue of whether a particular individual should have direct access to a veteran residing in a CRC.

The CRC would be required by proposed paragraph (j)(3)(i)(B) to immediately, meaning no more than 24 hours after the provider becomes aware of the alleged violation, report all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property to the approving official. In proposed paragraph (j)(3)(i)(B)(1)–(6), we would set out the minimum information that must be contained in a report of an alleged violation. The intent of the proposed rule is to place the approving official on notice of any alleged violation so that appropriate follow-up measures can be initiated. Follow-up measures may include contacting veteran residents, ensuring any affected veteran resident receives a medical evaluation from a VA health care provider, or conduct necessary interim monitoring as provided for in § 17.65(a). Proposed paragraph (j)(3)(i)(C) would require the CRC to have evidence that all alleged violations are documented and thoroughly investigated. The facility would be required to prevent further potential abuse while the investigation is in progress. The proposed rule would require that the results of all investigations be reported to the approving official within 5 working days of the incident, and to other officials in accordance with State law, and that appropriate corrective action be taken if the alleged violation is verified. The proposed requirements in paragraphs (j)(3)(i)(B) and (C) are consistent with those already in effect for State Veterans Homes under § 51.90(c).

VA currently receives reports of alleged mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property on an ad hoc basis. The proposed rule would formalize a reporting requirement and would ensure that VA is notified of any such allegation so that appropriate steps can be taken to ensure the safety and health of veterans residing in the CRC. The requirement that the investigation be completed within 5 working days and reported to both VA and other officials in accordance with State law would ensure that the investigation is completed in a timely manner, and that

corrective action is taken to prevent further violations.

We propose in paragraph (j)(3)(i)(D) that employees accused of alleged violations involving mistreatment, neglect, or abuse or misappropriation of resident property, must be removed from all duties requiring direct veteran resident contact during the pendency of the facility's investigation. VA believes that removing such employee from duties involving direct resident contact until the facility completes its investigation is a prudent step to ensure veteran resident safety and to provide assurance to veteran residents that the accused employee would not be allowed direct access to them until the alleged incident is investigated and any necessary corrective steps are taken, if needed.

Proposed paragraph (j)(4) would define the three classes of individuals considered to be employees of the CRC for purposes of this proposed rule. Proposed paragraph (j)(4)(i) would establish that non-VA health care providers at CRCs would be considered employees. Non-VA health care providers may have frequent contact with veteran residents, and are not subject to direct VA control or management. In addition, proposed paragraph (j)(4)(ii) would establish that the term "employee" would include CRC staff who are not health care providers. CRCs employ a variety of personnel that may include, for example, contractors or janitorial staff. These individuals have access to veteran residents, and some may be in a unique position to take advantage of veterans.

Proposed paragraph (j)(4)(iii) would include persons with direct resident access in the definition of "employee." The term "person with direct resident access" would mean an individual living in the facility who is not receiving services from the facility, who may have access to the resident or the resident's property, or may have one-on-one contact with the resident. This could include relatives of live-in staff members. These individuals with direct resident access are most commonly found in medical foster homes, which are typically small CRCs located in a family home, with no more than three consumer residents that are run by certain members of a family, while other family members are not employed by the CRC but continue to live in the home. They do not provide care or services to veteran residents, but may have regular contact with, or access to, veteran residents and their property. We do not include fellow residents who are receiving services from the CRC in the

definition of "person with direct resident access" because we believe that it is inappropriate to consider the background of patients.

In proposed paragraph (j)(5), we would define the term "convicted" for purposes of this proposed rule. An employee would be considered "convicted" of a criminal offense when a judgment of conviction has been entered against the individual by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged. It would also include a finding of guilt against the individual by a Federal, State, or local court. The term "convicted" would also include a plea of guilty or nolo contendere by the individual has been accepted by a Federal, State, or local court. Finally, the term would also encompass participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. The proposed definition covers the spectrum of outcomes possible when a court of competent jurisdiction finds that a defendant has committed a criminal act. It recognizes that the act that resulted in the conviction, as well as the conviction itself, is relevant to the issue of safety and health of veterans residing in CRCs.

Proposed paragraph (j)(6) would provide that, for purposes of proposed paragraph (j)(3), the terms "abuse" and "neglect" would have the same meaning set forth in 38 CFR 51.90(b). That paragraph describes residents' right to be free from mental, physical, sexual, and verbal abuse or neglect, corporal punishment, and involuntary seclusion. Mental abuse, physical abuse, and sexual abuse are also further defined.

The proposed rule would be enforced through the normal VA inspection and approval process established in § 17.65. This section states that VA may approve a CRC meeting all of the standards in § 17.63 based on the report of a VA inspection and any findings of necessary interim monitoring of the facility. CRCs are inspected by VA at least every 12 months, and an approval is valid for a 12-month period. A CRC may gain provisional approval if that facility does not meet one or more of the standards in § 17.63, provided the deficiencies do not jeopardize the health or safety of residents, and the facility and VA agree to a plan for correcting the deficiencies in a specified amount of time.

If the approving official determines that a CRC does not comply with all of the standards in § 17.63, the facility is

provided notice of the discrepancy and an opportunity for a hearing. Approval of a CRC may be revoked following a hearing as provided for in § 17.71. When revocation occurs, VA ceases referring veterans to the CRC and notifies any veteran residing in that facility of the revocation. Although this proposed rule would not change the process of inspection, approval, or revocation of approval of CRCs established in current 38 CFR 17.61 through 17.72, we have provided the above discussion to show as a practical matter how CRCs would be affected by this proposed rule. The public is invited to comment on whether the proposed new standards in paragraphs (e) and (j) should be enforced in the same manner as every other standard in § 17.63.

The proposed changes to paragraph (j) require a CRC to maintain certain records, develop and implement written policies and procedures prohibiting mistreatment, neglect, abuse of residents, and misappropriation of resident property. The approving VA official may request these records and policies to ensure compliance with VA standards. Current paragraph (i) addresses records that must be maintained by the CRC. We propose to amend paragraph (i) to include the new recordkeeping requirement. We would also reorganize this paragraph to consolidate all resident-related record requirements into a single subparagraph.

Proposed paragraph (i)(1) would state that the CRC must maintain records on each resident in a secure place. Resident records must include a copy of all signed agreements with the resident. Resident records may be disclosed only with the permission of the resident, or when required by law. This mirrors current paragraph (i)(1), (i)(2)(ii), and (i)(3).

In paragraph (i)(2), we would state that the CRC must maintain and make available, upon request of the approving official, records establishing compliance with paragraphs (j)(1) through (3) of this section; written policies and procedures required under paragraph (j)(3) of this section; and, emergency notification procedures. A CRC is required to hire qualified and properly trained staff, per current paragraphs (j)(1) and (2). VA verifies compliance with this standard during routine facility inspections. The proposed rule would prohibit a CRC from employing certain individuals and would require a CRC to develop and implement certain policies and to investigate and document certain allegations of abuse or neglect. The proposed change to paragraph (i) would address the need to maintain records

reflecting compliance with these standards, and would ensure that the approving official may access these records upon request. Current paragraph (i)(2)(i) already requires a CRC to maintain records regarding emergency notification procedures. This proposal would consolidate this with other recordkeeping requirements that are not resident-specific.

In addition, we propose to amend § 17.63(e)(1), regarding the maximum number of beds allowed in a resident's bedroom. Current standards provide that resident bedrooms must contain no more than four beds, and multiresident rooms must provide each resident at least 80 square feet of living space. We propose to limit the number of resident beds in newly established bedrooms in approved facilities and facilities seeking approval. Limiting the number of beds to up to two per bedroom would ensure that veterans receive an appropriate amount of privacy and would appropriately minimize the impact of visits from guests, care providers, etc., on the veteran's quality of life. Under the proposed rule, facilities approved before the effective date of the rule that already have bedrooms with more than two beds would be able to retain that configuration, but could not establish any new bedrooms with more than two beds in a room. Bedrooms in facilities approved after the effective date of the final rule, or newly established bedrooms in facilities approved before the effective date of the final rule, would not be permitted to provide more than two beds. We would allow currently approved configurations because we do not want to negatively impact veteran residents placed in those CRCs who are satisfied with their arrangement.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

This proposed rule includes provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking to OMB for review. OMB

assigns a control number for each collection of information it approves. VA 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. Proposed § 17.63(i) and (j) would require a collection of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the collection of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand-delivery to: Director, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or fax to (202) 273–9026; or submitted through <http://www.regulations.gov>. Comments should indicate that they are submitted in response to “RIN 2900–AP06—Ensuring a Safe Environment for Community Residential Care Residents.”

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

VA considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of VA functions, including whether the information will have practical utility;
- Evaluating the accuracy of VA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

The collection of information contained in 38 CFR 17.63(i) and (j) is described immediately following this paragraph.

Title: Ensuring a Safe Environment for Community Residential Care Residents.

Summary of collection of information: Current § 17.63(i) addresses recordkeeping requirements for a CRC. Information collection under this paragraph was approved by OMB under OMB control number 2900-0491; however that approval has expired. We propose amending paragraph (i) to address not only the recordkeeping requirements currently in that paragraph, but also recordkeeping requirements under paragraphs (j)(1) through (3).

Paragraph (i)(1) would require the CRC to maintain records on each resident, to include a copy of all signed agreements with the resident. We estimate the annual burden related to this information collection to be one hour per year.

Paragraph (i)(2) would state that the CRC must maintain and make available upon request of the approving official, records establishing compliance with paragraphs (j)(1) and (2). These paragraphs relate to CRC staff requirements, and provide that the CRC must have sufficient, qualified staff must be on duty and available to care for the resident and ensure the health and safety of each resident. The CRC provider and staff must have adequate education, training, or experience to maintain the facility. We estimate that the annual burden related to information collection required to establish that the CRC has sufficient, qualified staff, and that the CRC provider and staff have adequate training and education, would be two hours.

Paragraph (i)(2) would also require the CRC to maintain records related to proposed paragraph (j)(3). Proposed § 17.63(j)(3) would require CRCs to immediately, meaning no more than 24 hours after the provider becomes aware of the alleged violation, report all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property to the approving official. We would require that the report, at a minimum, must include the facility name, address, telephone number, and owner; the date and time of the alleged violation; a summary of the alleged violation; the name of any public or private officials or VHA program offices that have been notified of the alleged

violations, if any; whether additional investigation is necessary to provide VHA with more information about the alleged violation; and contact information for a person who can provide additional details at the community residential care provider, including a name, position, location, and phone number.

We would require the CRCs to document and thoroughly investigate evidence of an alleged violation. The results of all investigations must be reported to the approving official within 5 working days of the incident and to other officials in accordance with State law. It would also require facilities to develop and implement written policies and procedures to prohibit the mistreatment, neglect, and abuse of residents and misappropriation of resident property. The approving VA official may request the facility to produce such written policies and procedures.

The most current data available to VA (Q4 FY2012) reflects that we have 1,293 approved CRCs, 493 of which are Medical Foster Homes at the 1 to 3 bed size. The total number of staff working in these facilities is 5,614. This aggregate number of CRC staff is distributed in CRCs as follows: 2.5 staff for a 1 to 3 bed facility, 4 staff for a 4 to 15 bed facility, 5 staff for a 15 to 26 bed facility and 11 staff for a 26 to 100+ bed facility.

CRCs would be required to report information under this proposed rule when the facility: (1) Has an alleged violation involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property; or, (2) is reporting the results of an investigation into that alleged violation. The CRCs would also be required to document and investigate evidence of any alleged violation. We view the reporting, documenting, and investigating of an alleged incident and the subsequent report of the results of the investigation to be one collection of information, as it focuses on one set of alleged facts and the facility's investigation of those facts.

VA does not currently require CRCs to report to the approving official allegations of resident abuse or neglect. VA surveyed CRC coordinators at the VA medical facilities that approve CRC sponsors. Based on information from CRC coordinators, we believe that VA currently receives fewer than one report of alleged mistreatment, neglect, or abuse, including injuries of unknown source, or misappropriation of resident property from CRCs in any given year. This proposed rule would formalize the reporting and investigation requirement

and we believe this would more likely than not result in an increase in the number of reports of alleged abuse mistreatment, neglect, or abuse, including injuries of unknown source, or misappropriation of resident property per year. However, for purposes of this estimate, we will assume that a CRC will have one incident per year related to an alleged violation involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property; or, reporting the results of an investigation into that alleged violation. The estimated average burden for an alleged violation response is three hours.

All approved CRCs would be required to develop and implement written policies and procedures to prohibit the mistreatment, neglect, and abuse of residents and misappropriation of resident property. On inspection of a CRC, VA would require the facility to produce such written policies and procedures. The written policies would have to be developed once, although it is possible that a promulgated policy could require revision in the future. VA intends to develop sample policies and boilerplate that could be adapted by a CRC to meet the facility's individual requirements. This would decrease the burden of this proposed information collection. VA estimates that the information collection burden on a CRC utilizing a sample policy or boilerplate developed by VA would be two hours.

Finally, paragraph (i)(2) would require the CRC to maintain a record of emergency notification procedures. This is consistent with current § 17.63(i)(2)(i). Once emergency notification procedures are in place, there may be instances in which the CRC may periodically review and modify the existing procedures. We estimate the annual burden of this information collection to be 0.5 hours.

Description of need for information and proposed use of information: VA needs this information to ensure the health and safety of veterans placed in these facilities. In CRCs, where VA involvement is less intensive and to which VA does not provide any payments or services, we believe that information obtained under the proposed rule would provide necessary protection for veteran residents.

Description of Likely Respondents: Operators of CRCs currently listed or that request future listing on VA's approved CRCs referral list.

Estimated Number of Respondents per Year: 1,293 operators of CRCs.

Estimated Frequency of Responses: Once in a 12-month period.

Estimated Average Burden per Response: 8.5 hours.

Estimated Total Annual Reporting and Recordkeeping Burden: 10,990.5 hours.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This proposed rule would be small business neutral as it applies only to those CRCs seeking inclusion on VA's list of approved CRCs. The costs associated with this proposed rule are minimal, consisting of the administrative requirement to develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property; ensure that no employees are employed in contravention to the proposed rule; report to VA any alleged violation involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property; and investigate alleged resident abuse, take steps to prevent further harm, and implement appropriate corrective measures.

A CRC may elect to order background checks on employees from commercial sources or local law enforcement agencies. The cost of an individual background check varies dependent on the vendor, but VA believes the average cost is \$50. VA believes that 75 percent of CRCs are required to, or could obtain, criminal background checks on employees through one or more existing federal or state programs. This includes: (1) The state grant program administered by the Centers for Medicare and Medicaid Services (CMS) for conducting federal and state criminal background checks on direct patient access employees of long-term care facilities and providers (42 U.S.C. 1320a–71); (2) the CMS requirement applicable to facilities receiving Medicare and Medicaid funds; and (3) various state laws or regulations mandating criminal background screening for employment to work with the elderly or disabled. In addition, many CRCs that are currently servicing veterans already, voluntarily, have policies and procedures in place to review the backgrounds of their employees and make employment decisions consistent with this rulemaking as one way to ensure resident safety.

The remaining 25 percent of CRCs (324) would more likely than not opt to

obtain criminal background checks on CRC staff in order to be approved by VA. The median number of staff in CRCs currently approved by VA is five. We estimate the cost that would be incurred for obtaining criminal background checks on CRC staff is \$250 per CRC.

On this basis, the Secretary certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. Therefore, under 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action” requiring review by OMB, unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually

within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm/>, by following the link for VA Regulations Published From FY 2004 to FYTD.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles affected by this document are 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; and 64.018, Sharing Specialized Medical Resources.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on November 5, 2015, for publication

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Veterans.

Dated: November 6, 2015.

Jeffrey M. Martin,

Office Program Manager, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, Department of Veterans Affairs proposes to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Amend § 17.63 by revising paragraph (e)(1) and paragraph (i) and adding paragraphs (j)(3) through (6) to read as follows:

§ 17.63 Approval of community residential care facilities.

* * * * *

(e) * * *

(1) Contain no more than four beds: (i) Facilities approved before [DATE 30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE] may not establish any new resident bedrooms with more than two beds per room;

(ii) Facilities approved on or after [DATE 30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE] may not provide resident bedrooms containing more than two beds per room.

* * * * *

(i) *Records.* (1) The facility must maintain records on each resident in a secure place. Resident records must include a copy of all signed agreements with the resident. Resident records may be disclosed only with the permission of the resident, or when required by law.

(2) The facility must maintain and make available, upon request of the approving VA official, records establishing compliance with paragraphs (j)(1) through (3) of this section; written policies and procedures required under paragraph (j)(3) of this section; and, emergency notification procedures. (Approved by the Office of Management and Budget under control number 2900–XXXX.)

(j) * * *

(3) The community residential care provider must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

(i) The community residential care provider must do all of the following:

(A) Not employ individuals who—

(1) Have been convicted by a court of law of abuse, neglect, or mistreatment of individuals; or

(2) Have had a finding entered into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of property.

(B) Ensure that all alleged violations involving mistreatment, neglect, or

abuse, including injuries of unknown source, and misappropriation of resident property are reported to the approving official immediately, which means no more than 24 hours after the provider becomes aware of the alleged violation. The report, at a minimum, must include—

(1) The facility name, address, telephone number, and owner;

(2) The date and time of the alleged violation;

(3) A summary of the alleged violation;

(4) The name of any public or private officials or VHA program offices that have been notified of the alleged violations, if any;

(5) Whether additional investigation is necessary to provide VHA with more information about the alleged violation; and

(6) Contact information for a person who can provide additional details at the community residential care provider, including a name, position, location, and phone number.

(C) Have evidence that all alleged violations of this paragraph (j) are documented and thoroughly investigated, and must prevent further abuse while the investigation is in progress. The results of all investigations must be reported to the approving official within 5 working days of the incident and to other officials in accordance with State law, and appropriate corrective action must be taken if the alleged violation is verified.

(D) Remove all duties requiring direct resident contact with veteran residents from any employee alleged to have violated this paragraph (j) during the investigation of such employee.

(4) For purposes of paragraph (j)(3) of this section, the term “employee” includes a:

(i) Non-VA health care provider at the community residential care facility;

(ii) Staff member of the community residential care facility who is not a health care provider, including a contractor; and

(iii) Person with direct resident access. The term “person with direct resident access” means an individual living in the facility who is not receiving services from the facility, who may have access to a resident or a resident’s property, or may have one-on-one contact with a resident.

(5) For purposes of paragraph (j)(3) of this section, an employee is considered “convicted” of a criminal offense—

(i) When a judgment of conviction has been entered against the individual by a Federal, State, or local court, regardless of whether there is an appeal

pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

(ii) When there has been a finding of guilt against the individual by a Federal, State, or local court;

(iii) When a plea of guilty or nolo contendere by the individual has been accepted by a Federal, State, or local court; or

(iv) When the individual has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

(6) For purposes of paragraph (j)(3) of this section, the terms “abuse” and “neglect” have the same meaning set forth in 38 CFR 51.90(b).

* * * * *

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–XXXX.)

[FR Doc. 2015–28749 Filed 11–10–15; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0622; FRL–9936–84–Region 9]

Approval and Promulgation of Implementation Plans; California; California Mobile Source Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the California State Implementation Plan (SIP) consisting of state regulations establishing standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines. The EPA is proposing to approve these regulations because they meet the applicable requirements of the Clean Air Act and are relied upon by various California plans intended to provide for the attainment or maintenance of the national ambient air quality standards.

DATES: Any comments must arrive by December 14, 2015.

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2015–0622], by one of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.

2. Email: lo.doris@epa.gov.

3. Mail or deliver: Doris Lo (AIR-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or email.

www.regulations.gov is an “anonymous access” system, and the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to the EPA, your email address will be automatically captured and included as part of the public comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Doris Lo, EPA Region IX, (415) 972-3959, lo.doris@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Background

Under the Clean Air Act (“Act” or CAA), the EPA establishes national ambient air quality standards (NAAQS) to protect public health and welfare, and has established such ambient standards for a number of pervasive air pollutants including ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, lead and particulate matter. Under section 110(a)(1) of the CAA, states must submit plans that provide for the implementation, maintenance, and enforcement of the NAAQS within each state. Such plans are referred to as state implementation plans (SIPs) and revisions to those plans are referred to as SIP revisions. Section 110(a)(2) of the CAA sets forth the content requirements for SIPs. Among the various requirements, SIPs must include enforceable emission limitations and other control measures, means, or techniques as may be necessary or appropriate to meet the applicable requirements of the CAA. CAA section 110(a)(2)(a).

As a general matter, the CAA assigns mobile source regulation to the EPA through title II of the Act and assigns stationary source regulation and SIP development responsibilities to the states through title I of the Act. In so doing, the CAA preempts various types of state regulation of mobile sources as set forth in section 209(a) (preemption of state emissions standards for new motor vehicles and engines), section 209(e) (preemption of state emissions standards for new and in-use off-road vehicles and engines),¹ and section 211(c)(4)(A) [preemption of state fuel

requirements for motor vehicle emission control, *i.e.*, other than California’s motor vehicle fuel requirements for motor vehicle emission control—see section 211(c)(4)(B)]. For certain types of mobile source emission standards, the State of California may request a waiver (for motor vehicles) or authorization (for off-road engines and equipment) for standards relating to the control of emissions and accompanying enforcement procedures. See CAA sections 209(b) (new motor vehicles) and 209(e)(2) (most categories of new and in-use off-road vehicles).

Over the years, the California Air Resources Board (CARB) has submitted many requests for waiver or authorization of its standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines, and the EPA has granted many such requests. For example, the EPA has granted waivers for CARB’s Low Emission Vehicle (LEV III) criteria pollutant standards for light- and medium duty vehicles, and has authorized emissions standards for such off-road vehicle categories as commercial harbor craft, and forklifts and other industrial equipment. See 78 FR 2112 (January 9, 2013) (advanced clean cars), 76 FR 77521 (December 13, 2011) (commercial harbor craft), and 77 FR 20388 (April 4, 2012) (forklifts and other industrial equipment).

Also over the years, CARB has submitted, and the EPA has approved, many local or regional California air district rules regulating stationary source emissions as part of the California SIP. See, generally, 40 CFR 52.220(c). With respect to mobile sources in general, California has submitted, and the EPA has approved, certain specific state regulatory programs, such as the in-use, heavy-duty, diesel-fueled truck rule, various fuels regulations, and the vehicle inspection and maintenance program (I/M, also known as “smog check”). See, *e.g.*, 77 FR 20308 (April 4, 2012) (in-use truck and bus regulation), 75 FR 26653 (May 12, 2010) (revisions to California on-road reformulated gasoline and diesel fuel regulations), and 75 FR 38023 (July 1, 2010) (revisions to California motor vehicle I/M program).

California relies on these local, regional, and state stationary and mobile source regulations to meet various CAA requirements and includes the corresponding emissions reductions in the various regional air quality plans developed to attain and maintain the NAAQS. The EPA generally allows California to take credit for the corresponding emissions reductions

¹ EPA regulations refer to “nonroad” vehicles and engines whereas California regulations refer to “off-road” vehicles and engines. These terms refer to the same types of vehicles and engines, and for the purposes of this action, we will be using the state’s chosen term, “off-road,” to refer to such vehicles and engines.

relied upon in the various regional air quality plans because, among other reasons, the regulations are approved as part of the SIP and are thereby federally enforceable as required under CAA section 110(a)(2)(A).

However, California also relies on emissions reductions from the regulations for which the EPA has previously granted waivers or authorizations, and historically, the EPA has approved regional air quality plans that take credit for emissions reductions from such regulations, notwithstanding the fact that California has not submitted these particular regulations as part of the California SIP.

The EPA's longstanding practice of approving California plans that rely on emissions reductions from such "waiver measures," notwithstanding the lack of approval as part of the SIP, was challenged in several petitions filed in the Ninth Circuit Court of Appeals. In a recent decision, the Ninth Circuit held in favor of the petitioners on this issue and concluded that CAA section 110(a)(2)(A) requires that all state and local control measures on which SIPs

rely to attain the NAAQS be included in the SIP and thereby subject to enforcement by the EPA and members of the general public. See *Committee for a Better Arvin v. EPA*, 786 F.3d 1169 (9th Cir. 2015).

In response to the decision in *Committee for a Better Arvin v. EPA*, CARB submitted a SIP revision on August 14, 2015 consisting of state mobile source regulations that establish standards and other requirements for the control of emissions from various new on-road and new and in-use off-road vehicles and engines for which the EPA has issued waivers or authorizations and that are relied upon by California regional plans to attain and maintain the NAAQS. The EPA is proposing action today under CAA section 110(k) on CARB's August 14, 2015 SIP revision submittal.

II. The State's Submittal

A. What regulations did the state submit?

On August 14, 2015, CARB submitted a SIP revision that included a set of state

mobile source regulations for which waivers or authorizations have been granted by the EPA under section 209 of the CAA. The SIP revision consists of the regulations themselves and documentation of the public process conducted by CARB in approving the regulations as part of the California SIP. Table 1 below presents the contents of the SIP revision by mobile source category and provides, for each such category, a listing of the relevant sections of the California Code of Regulations (CCR) that establish standards and other requirements for control of emissions from new or in-use vehicles or engines; the corresponding date of CARB's hearing date or Executive Officer (EO) action through which the regulations or amendments were adopted; and the notice of decision in which the EPA granted a waiver or authorization for the given set of regulations.²

TABLE 1—CARB SIP REVISION SUBMITTAL SUMMARY

Source category	Relevant sections of California Code of Regulations	Date of relevant CARB hearing date(s) or Executive Officer action	EPA Notice of decision
On-Road Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles (LEV II).	Amendments to 13 CCR §§ 1961, 1965, and 1978 and the documents incorporated by reference (see table 2 below), effective for state law purposes on 12/04/03; and amendments to 13 CCR §§ 1961, 1976, 1978, and documents incorporated by reference (see table 2 below), effective for state law purposes on 2/17/07.	12/12/02, 6/22/06	70 FR 22034 (4/28/05); 75 FR 44948 (7/30/10)
On-Road Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles (LEV III) and Zero Emission Vehicles (ZEV).	Adoption of 13 CCR §§ 1961.2 and 1962.2 (excluding subsection 1962.2(g)(6)) and amendments to 13 CCR §§ 1900, 1956.8, 1960.1, 1961, 1962.1, 1962.2 (re-numbered to 1961.3), 1965, 1976, 1978, 2037, 2038, 2062, 2112, 2139, 2140, 2145, 2147, and 2235 and the documents incorporated by reference (see table 2 below), effective for state law purposes on 08/07/12; amendments to 13 CCR §§ 1900, 1956.8, 1960.1, 1961, 1961.2, 1962.1, 1962.2 (excluding subsection 1962.2(g)(6)(C)), and 1976 and the documents incorporated by reference (see table 2 below), effective for state law purposes on 12/31/12.	01/26/12, 11/15/12	78 FR 2112 (1/9/13)
On-Road Heavy-Duty Gasoline Engines.	13 CCR § 1956.8 and the document incorporated by reference (see table 2 below), effective for state law purposes on 12/4/03.	12/12/02, 9/5/03 (EO)	75 FR 70237 (11/17/10)
On-Road Heavy-Duty Diesel Engines.	Amendments to 13 CCR § 1956.8, and the document incorporated by reference (see table 2 below), effective for state law purposes on 11/17/02.	10/25/01	70 FR 50322 (8/26/05)
On-Road Motorcycles	Amendments to 13 CCR §§ 1900, 1958 (excluding 1958(a)(1)), and 1965, and the document incorporated by reference (see table 2 below), effective for state law purposes on 11/22/99.	12/10/98	71 FR 44027 (8/3/06)

² CARB's August 14, 2015 SIP submittal included a table that lists the specific sections of the CCR included in the submittal. By email dated October 23, 2015, CARB identified a few typographic errors in the table: (1) 13 CCR sections 2456(d)(3), 2456(d)(5), and 2456(d)(6) (i.e., not sections

2455(d)(3), 2455(d)(5), and 2455(d)(6)) are excluded from the submittal of regulations establishing standards and other requirements for the portable equipment registration program (PERP); (2) 13 CCR section 2485(1)(B) (not just section 2385(1)(A)) is excluded from the submittal of regulations related

to truck idling; (3) and 13 CCR section 2474 is to be included in the submittal of regulations related to spark-ignition marine engines. See email from Alex Wong, CARB, to Jefferson Wehling, EPA Region IX, dated October 23, 2015.

TABLE 1—CARB SIP REVISION SUBMITTAL SUMMARY—Continued

Source category	Relevant sections of California Code of Regulations	Date of relevant CARB hearing date(s) or Executive Officer action	EPA Notice of decision
On-Road Heavy-Duty Engines—On-Board Diagnostic System (HD OBD).	13 CCR §§ 1971.1 and 1971.5, effective for state law purposes on 6/17/10.	5/28/09	77 FR 73459 (12/10/12)
On-Road Heavy Duty Vehicles—engine or vehicle idle controls.	13 CCR §§ 1956.8, 2404, 2424, 2425, and 2485 (excluding subsections 2485(c)(1)(A), 2485(c)(1)(B), and 2485(c)(3)(B)), and the document incorporated by reference (see table 2 below), effective for state law purposes on 11/15/2006.	10/20/05	77 FR 9239 (2/16/12)
In-Use Diesel-Fueled Transport Refrigeration Units.	13 CCR § 2477, as amended, effective for state law purposes on 3/7/11.	11/18/10	78 FR 38970 (6/28/13)
Commercial Harbor Craft	17 CCR § 93118.5 (excluding subsection 93118.5(e)(1)), effective for state law purposes on 11/19/08..	11/15/07, 9/2/08 (EO)	76 FR 77521 (12/13/11)
Off-Road Large Spark-Ignition (LSI) Engines.	New LSI engine emissions standards: 13 CCR §§ 2430, 2431, 2433, 2434, and 2438; LSI fleet requirements: 13 CCR §§ 2775, 2775.1 and 2775.2, and the documents incorporated by reference (see table 2 below), effective for state law purposes on 5/12/07.	5/25/06, 3/2/07 (EO)	77 FR 20388 (4/4/12)
Auxiliary Diesel Engines on Ocean-Going Vessels.	13 CCR § 2299.3 and 17 CCR § 93118.3, effective for state law purposes on 01/02/09.	12/6/07, 10/16/08 (EO)	76 FR 77515 (12/13/11)
In-Use Off-Road Diesel Fueled Fleets.	13 CCR §§ 2449 (excluding subsection 2449(d)(2)) 2449.1, and 2449.2, effective for state law purposes on 12/14/11.	5/25/07, 7/26/07, 12/11/08, 1/22/09, 7/23/09, 12/17/10	78 FR 58090 (9/20/13)
Mobile Cargo Handling Equipment (CHE).	13 CCR § 2479 (excluding subsections (e)(2) and (e)(4)), as amended, effective for state law purposes on 10/14/12.	9/22/11	80 FR 26249 (5/7/15)
Small Off-Road Engines (SORE).	13 CCR §§ 2401, 2403, 2404, 2405, 2406, 2408, 2408.1, and 2409, and the document incorporated by reference (see table 2 below), effective for state law purposes on 5/5/10.	11/21/08	80 FR 26041 (5/6/15)
Off-Road Compression—Ignition (CI) Engines.	13 CCR §§ 2420, 2421, 2423, 2424, 2425, 2425.1, 2426, and 2427, and the documents incorporated by reference (see table 2 below), effective for state law purposes on 1/6/06.	1/27/00, 12/9/04	75 FR 8056 (2/23/10)
In-Use Portable Diesel-Fueled Engines (PDE).	17 CCR §§ 93116 through 93116.5 (excluding subsection 93116.3(a)), effective for state law purposes on 3/11/05.	2/26/04	77 FR 72846 (12/6/12)
Portable Equipment Registration Program (PERP).	13 CCR §§ 2451, 2452, 2453, 2455 (excluding subsections 2455(a) and 2455(b)), 2456 (excluding subsections 2456(a), 2456(d)(3), 2456(d)(5), and 2456(d)(6)), 2458, 2459, 2460, 2461, and 2462, as amended, effective for state law purposes on 9/12/07.	3/27/97, 7/31/07 (EO), 12/10/98, 2/26/04, 6/22/06, 3/22/07	77 FR 72851 (12/6/12)
Spark-Ignition Marine Engines and Boats (Marine SI).	13 CCR §§ 2111, 2112, Appendix A therein, 2139, 2147, 2440, 2442, 2443.1, 2443.2, 2444.1, 2444.2, 2445.1, 2445.2, 2446, 2447 and 2474, and the documents incorporated by reference (see table 2 below), effective for state law purposes on 08/16/09.	7/24/08, 6/5/09 (EO)	80 FR 26032 (5/16/15)
Off-Highway Recreational Vehicles and Engines (OHRV).	13 CCR §§ 2111, 2112, 2411, 2412, and 2413, and the document incorporated by reference (see table 2 below), effective for state law purposes on 8/15/07.	7/20/06	79 FR 6584 (2/4/14)

The regulations submitted by CARB and listed in table 1 incorporate by reference certain documents that

establish test procedures and labeling specifications, among other things, and CARB submitted the documents as part

of the overall SIP revision. Table 2 lists the incorporated documents included in the SIP submittal.

TABLE 2—DOCUMENTS INCORPORATED BY REFERENCE IN CARB REGULATIONS LISTED IN TABLE 1, ABOVE, AND SUBMITTED AS PART OF SIP REVISION

On-Road Passenger Cars, Light-Duty Trucks, and Medium-Duty and Heavy-Duty Vehicles (LEV II):

California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles, as last amended September 5, 2003.

California Motor Vehicle Emission Control and Smog Index Label Specifications for 1978 through 2003 Model Year Motorcycles, Light-, Medium- and Heavy-Duty Engines and Vehicles,” as last amended September 5, 2003.

California Smog Index Label Specifications for 2004 and Subsequent Model Passenger Cars and Light-Duty Trucks,” adopted September 5, 2003.

California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended September 5, 2003.

TABLE 2—DOCUMENTS INCORPORATED BY REFERENCE IN CARB REGULATIONS LISTED IN TABLE 1, ABOVE, AND SUBMITTED AS PART OF SIP REVISION—Continued

California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as amended June 22, 2006.
California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended June 22, 2006.
California Exhaust Emission Standards Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended June 22, 2006.
<i>On-Road Passenger Cars, Light-Duty Trucks, and Medium-Duty and Heavy-Duty Vehicles (LEV III) and Zero Emission Vehicles (ZEV):</i>
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles, as last amended March 22, 2012.
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines, as last amended March 22, 2012.
California Non-Methane Organic Gas Test Procedures, as last amended March 22, 2012.
California 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended March 22, 2012, excluding GHG-related provisions.
California Environmental Performance Label Specifications for 2009 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles, as last amended March 22, 2012.
California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended March 22, 2012.
California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended March 22, 2012.
Specifications for Fill Pipes and Openings of 1977 through 2014 Model Motor Vehicle Fuel Tanks, as last amended March 22, 2012.
Specifications for Fill Pipes and Openings of 2015 and Subsequent Model Motor Vehicle Fuel Tanks, adopted March 22, 2012.
California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, adopted March 22, 2012, excluding GHG-related provisions.
California Exhaust Emission Standards and Test Procedures for 2009 through 2017 Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, as last amended March 22, 2012, excluding GHG-related provisions.
California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, adopted March 22, 2012, excluding GHG-related provisions.
California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended December 6, 2012, excluding GHG-related provisions.
California 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended December 6, 2012, excluding GHG-related provisions.
California Non-Methane Organic Gas Test Procedures, as last amended December 6, 2012.
California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended December 6, 2012.
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines, as last amended December 6, 2012.
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles, as last amended December 6, 2012.
California Exhaust Emission Standards and Test Procedures for 2009 through 2017 Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, as last amended December 6, 2012.
California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, adopted December 6, 2012, excluding GHG-related provision.
<i>On-Road Heavy-Duty Gasoline Engines:</i>
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-cycle Engines, as last amended December 12, 2002.
<i>On-Road Heavy-Duty Diesel Engines:</i>
California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles, as last amended October 25, 2001.
<i>On-Road Motorcycles:</i>
California Motor Vehicle Emission Control and Smog Index Label Specifications, as last amended October 22, 1999.
<i>On-Road Heavy Duty Vehicles—Reduced Idling:</i>
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines, as last amended September 1, 2006.
<i>Off-Road Large Spark-Ignition (LSI) Engines:</i>
California Exhaust Emission Standards and Test Procedures for New 2001 through 2006 Off-Road Large Spark-Ignition Engines, Parts I and II, adopted September 1, 1999 and as last amended March 2, 2007.
California Exhaust and Evaporative Emission Standards and Test Procedures for 2007 through 2009 Off-Road Large Spark-Ignition Engines, (2007–2009 Test Procedure 1048), adopted March 2, 2007.
California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines, (2010 and Later Test Procedure 1048), adopted March 2, 2007.
California Exhaust and Evaporative Emission Standards and Test Procedures for New 2007 and Later Off-Road Large Spark-Ignition Engines (Test Procedures 1065 and 1068), adopted March 2, 2007.
<i>Small Off-Road Engines (SORE):</i>
California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines, as last amended February 24, 2010.

TABLE 2—DOCUMENTS INCORPORATED BY REFERENCE IN CARB REGULATIONS LISTED IN TABLE 1, ABOVE, AND SUBMITTED AS PART OF SIP REVISION—Continued

Off-Road Compression-Ignition (CI) Engines:

California Exhaust Emission Standards and Test Procedures for New 2000 and Later Tier 1, Tier 2, and Tier 3 Off-Road Compression-Ignition Engines, Part I–B, adopted January 28, 2000 and as last amended October 20, 2005.

California Exhaust Emission Standards and Test Procedures for New 1996 and Later Tier 1, Tier 2, and Tier 3 Off-Road Compression-Ignition Engines, Part II, adopted May 12, 1993 and as last amended October 20, 2005.

California Exhaust Emission Standards and Test Procedures for New 2008 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–C, adopted October 20, 2005.

Spark-Ignition Marine Engines and Boats (Marine SI):

California Exhaust Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines, as last amended June 5, 2009.

Procedures for Exemption of Add-On and Modified Parts for Off-Road Categories, as last amended June 5, 2009.

Off-Highway Recreational Vehicles and Engines (OHRV):

California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles, and Engines, as last amended August 15, 2007.

It is important to note that CARB has expressly excluded from the August 14, 2015 SIP submittal certain sections or subsections of California code that have been authorized or waived by the EPA under CAA section 209. The excluded provisions pertain to:

- Greenhouse Gas (GHG) exhaust emission standards for 2009 through 2016 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, and 2017 and subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; and

- GHG related provisions incorporated in the test procedures. Also, CARB has expressly excluded certain sections or subsections of California code that are not subject to preemption under CAA section 209 and thus not included in the related waiver or authorization by the EPA. These provisions pertain to:

- Fuel requirements;
- Idling restrictions on drivers;
- Opacity standards;
- Daily mass emission limits (from the PERP regulations); and
- Certain labeling and consumer notification requirements.

Section III.B.4 below provides further discussion of these excluded provisions.

B. Are there other versions of these regulations?

As noted previously, the CAA generally assigns to the EPA the responsibility of establishing standards for the control of emissions from mobile sources. However, the State of California was a pioneer in establishing standards for the control of emissions from new motor vehicles, and, in part due to the state's pioneering efforts, Congress established in 1967 a process under which California, alone among the

states, would be granted a waiver from preemption (if certain criteria are met) and thereby enforce its own standards and other requirements for the control of emissions from new motor vehicles. In the 1990 CAA Amendments, Congress extended a similar process that had been established under section 209 for new motor vehicles to new and in-use off-road vehicles and engines. See CAA section 209(e)(2). Under the 1990 CAA Amendments, the EPA must authorize California standards for the control of emissions of off-road vehicles and engines if certain criteria are met.

The first waiver granted was for California's On-Road Emissions Standards for Model Year 1968. (See 33 FR 10160, July 16, 1968.) Since then, there have been dozens of waivers and authorizations granted by the EPA for new and amended CARB mobile source regulations. The EPA's Office of Transportation and Air Quality maintains a Web site that provides a general description of the waiver and authorization process and lists all of the various waivers and authorizations granted by the Agency to CARB over the years. See <http://www.epa.gov/otaq/cafr.htm>.

Historically, as noted above, CARB regulations subject to the section 209 waiver or authorization process were not submitted to the EPA as a revision to the California SIP. Thus, for the purposes of the California SIP, there are no previous versions of the rules addressed in today's proposed action.

C. What is the purpose of the submitted regulations?

Historically, California has experienced some of the most severe and most persistent air pollution problems in the country. Under the

CAA, based on ambient data collected at numerous sites throughout the state, the EPA has designated areas within California as nonattainment areas for the ozone NAAQS and the particulate matter (both PM₁₀ and PM_{2.5}) NAAQS. See, generally, 40 CFR 81.305.

California also includes a number of areas that had been designated as nonattainment areas for the carbon monoxide NAAQS that the EPA has redesignated as attainment areas because they have attained the standard and are subject to an approved maintenance plan demonstrating how they will maintain the carbon monoxide standard into the future.

Mobile source emissions constitute a significant portion of overall emissions of carbon monoxide, volatile organic compounds (VOC), oxides of nitrogen (NO_x), sulfur dioxide (SO₂) and particulate matter (PM) in the various air quality planning areas within California, and thus, the purpose of CARB's mobile source regulations is to reduce these emissions and thereby reduce ambient concentrations to attain and maintain the NAAQS throughout California.³ At elevated levels, ozone and PM harm human health and the environment by contributing to premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems.

D. What requirements do the regulations establish?

Table 3 below describes the applicability of the regulations listed in table 1 above and summarizes some of the key emissions control requirements contained in the rules.

³ VOC and NO_x are precursors responsible for the formation of ozone, and NO_x and SO₂ are

precursors for fine particulate matter (PM_{2.5}). SO₂ belongs to a family of compounds referred to as

sulfur oxides (SO_x). PM_{2.5} precursors also include VOC and ammonia. See 40 CFR 51.1000.

TABLE 3—GENERAL DESCRIPTION OF REQUIREMENTS ESTABLISHED IN THE MOBILE SOURCE REGULATIONS INCLUDED IN THE AUGUST 14, 2015 SIP REVISION

Source category	Description of requirements in submitted regulation
On-Road Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles (LEV II).	CARB's "LEV II" regulations establish exhaust and evaporative emissions standards (and test procedures) for model year (MY) 2004 through 2014 passenger cars, light-duty trucks, and medium-duty passenger vehicles. The LEV II regulations also include the adoption of Compliance Assurance Program "CAP 2000" amendments that establish new motor vehicle certification and in-use test requirements—developed jointly with the U.S. Environmental Protection Agency—applicable to 2001 and subsequent model motor vehicles. For more information about CARB's LEV II regulations, see 68 FR 19811 (April 22, 2003), 70 FR 22034 (April 28, 2005), and 75 FR 44948 (July 30, 2010).
On-Road Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles (LEV III) and Zero Emission Vehicles (ZEV).	CARB's LEV III and ZEV amendments combine the control of criteria air pollutants and GHG emissions into a single coordinated package of requirements for MY 2015 through 2025 passenger cars, light-duty trucks, and medium-duty passenger vehicles. The requirements amend the exhaust and evaporative emissions standards, the test procedures, and the on-board diagnostic system specifications. (The standards related to GHG emissions are not included in the SIP revision submittal.) For more information about CARB's LEV III and ZEV amendments, see 78 FR 2112 (January 9, 2013).
On-Road Heavy-Duty Gasoline Engines.	CARB's on-road heavy-duty gasoline engine regulations establish exhaust emission standards for heavy-duty Otto-cycle engines and vehicles above 8,500 pounds gross vehicle weight rating (GVWR) for the 2004, 2005 through 2007, and the 2008 and subsequent MYs. These regulations align each of California's exhaust emission standards and test procedures with its federal counterpart in an effort to streamline and harmonize the California and federal programs. For more information about CARB's on-road heavy-duty gasoline engine regulations, see 75 FR 70237 (November 17, 2010).
On-Road Heavy-Duty Diesel Engines.	CARB's On-Road Heavy-Duty Diesel Engine regulations establish heavy-duty diesel regulations for 2007 and subsequent model year vehicles and engines (2007 California Heavy Duty Diesel Engine Standards) and related test procedures including the not-to-exceed (NTE) and supplemental steady state tests (supplemental test procedures) to determine compliance with applicable standards. CARB's 2007 California Heavy Duty Diesel Engine Standards primarily align California's standards and test procedures with the federal standards and test procedures for 2007 and subsequent model year on-road heavy-duty vehicles and engines. For more information about CARB's On-Road Heavy-Duty Diesel Engine regulations, see 70 FR 50322 (August 26, 2005).
On-Road Motorcycles	CARB's regulations establish exhaust emissions standards and test procedures for new on-road motorcycles and motorcycle engines. For additional information about CARB's motorcycle regulations, see 71 FR 44027 (August 3, 2006).
On-Road Heavy-Duty Engines—On-Board Diagnostic System (HD OBD).	CARB's HD OBD regulations establish requirements for onboard diagnostic systems (OBD systems) that are installed on 2010 and subsequent model-year engines certified for sale in heavy-duty applications in California. The OBD systems, through the use of an onboard computer(s), monitor emission systems in-use for the actual life of the engine and are capable of detecting malfunctions of the monitored emission systems, illuminating a malfunction indicator light (MIL) to notify the vehicle operator of detected malfunctions, and storing fault codes identifying the detected malfunctions. For more information about CARB's HD OBD regulations, see 77 FR 73459 (December 10, 2012).
On-Road Heavy Duty Vehicles—engine or vehicle idle controls.	As submitted, CARB's truck idling requirements consist of "New engine requirements" that require new California-certified 2008 and subsequent model year on-road diesel engines in vehicles with a gross vehicle weight rating (GVWR) greater than 14,000 pounds (<i>i.e.</i> , heavy-duty diesel vehicles or "HDDV"s) be equipped with a system that automatically shuts down the engine after five minutes of continuous idling. For more information about CARB's truck idling requirements, see 77 FR 9239 (February 16, 2012).
In-Use Diesel-Fueled Transport Refrigeration Units (TRUs).	Establishes in-use performance standards for diesel-fueled TRUs and TRU generator sets operating in California, and facilities where TRUs operate. In-use TRU engines are required, through one of the compliance options set forth in the regulations (e.g., retrofit or replacement), to meet specific performance standards that vary by horsepower range, and that have two levels of stringency that are phased in over time—the Low Emission TRU Standards, beginning in 2008, and the Ultra-Low Emission TRU Standards beginning in 2010. More stringent performance standards are required at 7-year intervals until the Ultra-Low TRU standards are met. For more information about CARB's in-use TRU regulations, see 74 FR 3030 (January 16, 2009) and 78 FR 38970 (June 28, 2013).
Commercial Harbor Craft	CARB's commercial harbor craft regulations establish emissions standards, requirements related to control of emissions, and enforcement provisions applicable to diesel propulsion and auxiliary engines on new and in-use commercial harbor craft. For new harbor craft, each propulsion and auxiliary diesel engine on the vessel is required to be certified to the most stringent federal new marine engine emission standards for that engine's power rating and displacement in effect at the time of sale, lease, rent, or acquisition. The regulation imposes additional requirements for larger new ferries (with the capacity to transport seventy-five or more passengers), either by using best available control technology ("BACT"), or by using a federal Tier 4 certified propulsion engine. For in-use harbor craft, new or in-use diesel engines may not be sold, offered for sale, leased, rented, or acquired unless the diesel propulsion or auxiliary engines are certified to at least the federal Tier 2 or Tier 3 marine emission standards for new engines of the same power rating and displacement. In-use emission requirements are imposed on Tier 0 and Tier 1 marine engines in ferries, excursion vessels, tugboats, towboats, push boats, and multipurpose harbor craft. Those harbor craft are required to meet emission limits equal to or cleaner than the federal new marine engine certification standards in effect for the year that in-use engine compliance is required. For more information about CARB's commercial harbor craft regulations, see 76 FR 77521 (December 13, 2011).

TABLE 3—GENERAL DESCRIPTION OF REQUIREMENTS ESTABLISHED IN THE MOBILE SOURCE REGULATIONS INCLUDED IN THE AUGUST 14, 2015 SIP REVISION—Continued

Source category	Description of requirements in submitted regulation
Off-Road Large Spark-Ignition (LSI) Engines.	CARB's LSI regulations establish more stringent emissions standards for new off-road LSI engines (25 hp or greater, gasoline- or LPG-powered, excluding construction and farm equipment) beginning in 2007 (increasing in stringency in 2010), and in-use fleet requirements for forklifts and other industrial equipment with LSI engines. The fleet average in-use emission standards apply to operators of large- and medium-sized fleets of forklifts, sweepers/scrubbers, airport ground supported equipment (GSE), and industrial two tractors with engine displacements of greater than one liter. For more information about CARB's LSI regulations, see 77 FR 20388 (April 4, 2012).
Auxiliary Diesel Engines on Ocean-Going Vessels.	CARB's "At-Berth" regulation contains requirements that apply, with limited exceptions, to any person who owns or operates any container vessel, passenger vessel, or refrigerated cargo vessel that visits any of six specified California ports. It also contains requirements that affect any person who owns or operates those ports or terminals located at them. CARB's At-Berth regulation requires fleets of container vessels, passenger vessels and refrigerated cargo vessels to either: (1) Limit the amount of time they operate their auxiliary diesel engines by connecting to shore power for most of a vessel's stay at port ("Shore Power Option"); or (2) achieve equivalent emission reductions by employing other emission control techniques ("Equivalent Emission Reduction Option"). Fleet operators who elect the Shore Power Option are required to obtain the power that would otherwise be provided by a vessel's auxiliary engines by connecting to shore power for a percentage of the fleet's annual port visits. The required percentage of shore power connected port visits increases over the life of the regulation. Specifically, fifty percent of a fleet's total visits must be connected to shore power by 2014, followed by seventy percent by 2017, and eighty percent by 2020. For more information about CARB's At-Berth regulation, see 76 FR 77515 (December 13, 2011).
In-Use Off-Road Diesel Fueled Fleets.	CARB's In-Use Off-Road Diesel-Fueled Fleets Regulation applies to fleets with off-road compression-ignition vehicles or equipment greater than 25 horsepower. The regulation takes effect beginning as early as 2014, depending on fleet size. It requires fleet operators to meet a progressively more stringent combined PM and NO _x standard, or to reduce emissions through technology upgrades such as retrofit or replacement. For more information about CARB's In-Use Off-Road Diesel-Fueled Fleets Regulation, see 78 FR 58090 (September 20, 2013).
Mobile Cargo Handling Equipment (CHE).	CARB's mobile CHE regulation sets performance standards for engines equipped in newly purchased, leased, or rented (collectively known as "newly acquired"), as well as in-use, mobile cargo handling equipment used at ports or intermodal rail yards in California. The standards vary depending on the type of vehicle, whether the engine is used in off-road equipment or a vehicle registered as an on-road motor vehicle, and whether they are newly acquired or already in-use. For more information about CARB's mobile CHE regulation, see 77 FR 9916 (February 21, 2012) and 80 FR 26249 (May 7, 2015).
Small Off-Road Engines (SORE).	CARB's SORE regulations establish emissions standards for new spark ignition utility and lawn and garden equipment engines 25 horsepower and under. For more information about CARB's SORE regulations, see 80 FR 26041 (May 6, 2015).
Off-Road Compression -Ignition (CI) Engines.	CARB's Off-Road CI Engine Regulations establish emissions standards for new off-road diesel-powered engines and equipment. For more information about CARB's Off-Road CI Engine Regulations, see 75 FR 8056 (February 23, 2010).
In-Use Portable Diesel-Fueled Engines (PDE).	CARB's PDE regulation establishes requirements for in-use portable diesel-fueled engines 50 brake-horsepower (hp) and greater. Specifically, starting on January 1, 2010, all portable engines in California must be certified to meet a federal or California standard for newly manufactured off-road engines. More stringent requirements apply beginning on January 1, 2020. Fleets of portable engines must comply with increasingly more stringent weighted PM emission fleet averages that apply on three different deadlines (January 1, 2013, January 1, 2017, and January 1, 2020). For more information about CARB's PDE regulation, see 77 FR 72846 (December 6, 2012).
Portable Equipment Registration Program (PERP).	PERP is a voluntary statewide program that enables registration of off-road engines and equipment that operate at multiple locations across California, so that the engine and equipment owners can operate throughout California without obtaining permits from local air pollution control districts. The PERP sets out four general requirements applicable to all registered equipment: (1) Registered equipment may not operate in a manner that causes a nuisance; (2) registered equipment may not interfere with attainment of national or state ambient air quality standard; (3) registered equipment may not cause an exceedance of an ambient air quality standard; and (4) owners of registered equipment must provide notice and comply with requirements for prevention of significant deterioration if it would constitute a major modification of that source. The PERP also has specific requirements for both registered engines and certain types of equipment units. For more information about CARB's PERP regulations, see 77 FR 72851 (December 6, 2012).
Spark-Ignition Inboard and Sterndrive Marine Engines.	CARB's Inboard and Sterndrive Marine Engine regulations establish tier II hydrocarbon (HC) and NO _x exhaust emissions standards for new inboard and sterndrive engines. For more information about CARB's Marine SI Engine regulations, see 72 FR 14546 (March 28, 2007) and 76 FR 24872 (May 3, 2011).
Spark-Ignition Marine Engines and Boats (Marine SI).	CARB's Marine SI Engine regulations establish HC and NO _x exhaust emissions standards for outboard, inboard, and sterndrive engines and personal watercraft. For more information about CARB's Marine SI Engine regulations, see 72 FR 14546 (March 28, 2007), 76 FR 24872 (May 3, 2011), and 80 FR 26032 (May 6, 2015).
Off-Highway Recreational Vehicles and Engines (OHRV).	CARB's OHRV regulations establish exhaust and evaporative emission standards and test procedures for OHRVs. The regulations also establish a "red tag" program under which OHRVs not meeting the applicable emissions standards could be certified subject to use restrictions (i.e., use in specified areas during specified times of the year). For more information about CARB's OHRV regulations, see 79 FR 6584 (February 4, 2014).

III. EPA's Evaluation and Proposed Action

A. How is the EPA evaluating the regulations?

The EPA has evaluated the submitted regulations discussed above against the applicable procedural and substantive requirements of the CAA for SIPs and SIP revisions and has concluded that they meet all of the applicable requirements. Generally, SIPs must include enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary to meet the requirements of the Act [see CAA section 110(a)(2)(A)]; must provide necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out such SIP (and is not prohibited by any provision of federal or state law from carrying out such SIP) [see CAA section 110(a)(2)(E)]; must be adopted by a state after reasonable notice and public hearing [see CAA section 110(l)], and must not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act [see CAA section 110(l)].⁴

B. Do the state regulations meet CAA SIP evaluation criteria?

1. Did the state provide adequate public notification and comment periods?

Under CAA section 110(l), SIP revisions must be adopted by the state, and the state must provide for reasonable public notice and hearing prior to adoption. In 40 CFR 51.102(d), we specify that reasonable public notice in this context refers to at least 30 days.

All of the submitted regulations have gone through extensive public comment processes including CARB's workshop and hearing processes prior to state adoption of each rule. Also, the EPA's waiver and authorization processes provide an opportunity for the public to request public hearings to present information relevant to the EPA's consideration of CARB's request for waiver or authorization under section 209 of the CAA and to submit written comment.

In addition, on June 19, 2015, CARB published a notice of public meeting to

⁴ CAA section 193, which prohibits any pre-1990 SIP control requirement relating to nonattainment pollutants in nonattainment areas from being modified unless the SIP is revised to insure equivalent or greater emission reductions of such air pollutants, does not apply to these regulations because they would be new to the California SIP, and thus, do not constitute an amendment to a pre-1990 SIP control requirement.

be held on July 23, 2015 to consider adoption and submittal of the adopted regulations for which the EPA has granted waivers or authorization as a revision to the California SIP. CARB held the public hearing on July 23, 2015. No written comments were submitted to CARB in connection with the proposed SIP revision, and no public comments were made at the public hearing. CARB adopted the SIP revision at the July 23, 2015 Board Hearing (Board Resolution 15-40), and submitted the relevant mobile source regulations to the EPA on August 14, 2015 along with evidence of the public process conducted by CARB in adopting the SIP revision. We conclude that CARB's August 14, 2015 SIP revision submittal meets the applicable procedural requirements for SIP revisions under the CAA section 110(l) and 40 CFR 51.102.

2. Does the state have adequate legal authority to implement the regulations?

CARB has been granted both general and specific authority under the California Health & Safety Code (H&SC) to adopt and implement these regulations. California H&SC sections 39600 ("Acts required") and 39601 ("Adoption of regulation; Conformance to federal law") confer on CARB the general authority and obligation to adopt regulations and measures necessary to execute CARB's powers and duties imposed by state law. California H&SC sections 43013(a) and 43018 provide broad authority to achieve the maximum feasible and cost-effective emission reductions from all mobile source categories. Regarding in-use motor vehicles, California H&SC sections 43600 and 43701(b), respectively, grant CARB authority to adopt emission standards and emission control equipment requirements. Further, California H&SC section 39666 gives CARB authority to adopt airborne toxic control measures to reduce emissions of toxic air contaminants from new and in-use non-vehicular sources.

As a general matter, as noted above, the CAA assigns mobile source regulation to the EPA through title II of the Act and assigns stationary source regulation and SIP development responsibilities to the states through title I of the Act. In so doing, the CAA preempts various types of state regulation of mobile sources as set forth in section 209(a) (preemption of state emissions standards for new motor vehicles and engines), section 209(e) (preemption of state emissions standards for new and in-use nonroad vehicles and engines) and section

211(c)(4)(A) [preemption of state fuel requirements for motor vehicles, *i.e.*, other than California's motor vehicle fuel requirements for motor vehicle emission control—section 211(c)(4)(B)]. For certain types of mobile source standards, the State of California may request a waiver (for motor vehicles) or authorization (for off-road vehicles or engines) for standards relating to the control of emissions and accompanying enforcement procedures. See CAA sections 209(b) (new motor vehicles) and 209(e)(2) (most categories of new and in-use off-road vehicles).

The mobile source regulations that are the subject of today's proposed rule are those for which California has sought a waiver or authorization and for which the EPA has granted such waiver or authorization and thus the regulations proposed for approval today are not preempted under the CAA.⁵ For additional information regarding California's motor vehicle emission standards, please see the EPA's "California Waivers and Authorizations" Web page at URL address: <http://www.epa.gov/otaq/cafr.htm>. This Web site also lists relevant **Federal Register** notices that have been issued by the EPA in response to California waiver and authorization requests.

In addition, the EPA is unaware of any non-CAA legal obstacle to CARB's enforcement of the regulations and thus we conclude that the state has provided the necessary assurances that the state has adequate authority under state law to carry out the SIP revision (and is not prohibited by any provision of federal or state law from carrying out such SIP) and thereby meets the requirements of CAA section 110(a)(2)(E) with respect to legal authority.

3. Are the regulations enforceable as required under CAA section 110(a)(2)?

We have evaluated the enforceability of the submitted mobile source

⁵ We recognize that our authorization (78 FR 58090, September 20, 2013) for CARB's in-use off-road diesel-fueled fleet regulations has been challenged in both the D.C. Circuit and Ninth Circuit Court of Appeals. See *Dalton Trucking, Inc. v. EPA* (D.C. Cir., No. 13-1283) and *Dalton Trucking, Inc. v. EPA* (9th Cir., No. 13-74019). The D.C. Circuit will hear oral arguments in the case on November 9, 2015. (The Ninth Circuit is holding the case in abeyance pending a decision by the D.C. Circuit concerning jurisdiction.) An adverse decision from the D.C. Circuit or Ninth Circuit that remands or vacates our authorization of CARB's in-use off-road diesel-fueled fleet regulations will prompt reconsideration of our approval of the regulations as part of the SIP because, absent authorization, CARB will be prohibited from enforcing the regulations and thus will no longer be able to provide the necessary assurances called for in CAA section 110(a)(2)(E) for the subject regulations.

regulations with respect to applicability and exemptions; standard of conduct and compliance dates; sunset provisions; discretionary provisions; and test methods, recordkeeping and reporting,⁶ and have concluded for the reasons given below that the proposed regulations would be enforceable for the purposes of CAA section 110(a)(2).

First, with respect to applicability, we find that the submitted regulations would be sufficiently clear as to which persons and which vehicles or engines are affected by the regulations. See, e.g., 13 CCR section 2430 (applicability provision for off-road LSI engine emission standard regulation); 13 CCR section 2449(b) (applicability provision for in-use off-road diesel-fueled fleets regulation).

Second, we find that the submitted regulations would be sufficiently specific so that the persons affected by the regulations would be fairly on notice as to what the requirements and related compliance dates area. For instance, see the performance requirements for in-use off-road diesel-fueled fleets in 13 CCR section 2449(d). Third, none of the submitted regulations contain sunset provisions that automatically repeal the emissions limits by a given date or upon the occurrence of a particular event, such as the change in the designation of an area from nonattainment to attainment.⁷

Fourth, a number of the submitted regulations contain provisions that allow for discretion on the part of CARB's Executive Officer. Such "director's discretion" provisions can undermine enforceability of a SIP regulation, and thus prevent full approval by the EPA. However, in the instances of "director's discretion" in the submitted regulations, the discretion that can be exercised by the CARB Executive Officer is reasonably limited under the terms of the regulations. For instance, the regulation establishing standards and other requirements related to the control of emissions from

commercial harbor craft includes alternative control of emissions (ACE) provisions that allow a person to be deemed in compliance by implementing an alternative emission control strategy (AECS) subject to the approval of the Executive Officer. See 13 CCR section 93118.5(f). The regulation specifies the application process for such an AECS, requires a number of demonstrations to be included (such as equivalent emissions reduction), and provides for public review. With such constraints on discretion, the "director's discretion" contained in the submitted regulations would not significantly undermine enforceability of the rules by citizens or the EPA.

Lastly, each of the submitted regulations identifies appropriate test methods and includes adequate recordkeeping and reporting requirements sufficient to ensure compliance with the applicable requirements. The technical support document provides more detail concerning the contents of the submitted regulations.

4. Do the regulations interfere with reasonable further progress and attainment or any other applicable requirement of the Act?

All of the state's reasonable further progress (RFP), attainment, and maintenance plans rely to some extent on the emission reductions from CARB's mobile source program, including the emissions standards and other requirements for which the EPA has issued waivers or authorizations. For some plans, the reliance is substantial and for others the reliance is less. CARB's mobile source program is reflected in the emissions estimates for mobile sources that are included in the emissions inventories that form the quantitative basis for the RFP, attainment, and maintenance demonstrations. As such, CARB's mobile source regulations submitted for approval as a revision to the California SIP support the various RFP, attainment, and maintenance plans, and would not interfere with such requirements for the purposes of CAA section 110(l).

As noted above, CARB expressly excluded certain sections or subsections of California code from consideration as part of the SIP revision. These provisions relate to GHG motor vehicle emissions standards and test procedures, fuel requirements, idling limits, opacity standards, daily mass emission limits, and certain labeling and consumer notification requirements. We understand that the GHG provisions have been excluded

because they provide minimal emissions reductions over the time period covered by the current generation of California RFP, attainment, and maintenance plans. With respect to the non-preempted provisions, we understand that they were not included in the August 14, 2015 SIP submittal because they are not "waiver measures" and thus are not relevant for the purposes of responding to the Ninth Circuit's decision in *Committee for a Better Arvin v. EPA*. However, we note the general principle that state emissions limitations and other control measures that are relied upon to meet CAA SIP requirements, such as RFP, attainment or maintenance demonstrations, must be approved into the SIP to comply with the requirement for such limitations and other control measures to be enforceable for the purposes of CAA section 110(a)(2)(A). Thus, we encourage CARB to review the RFP, attainment, and maintenance plans for the various air quality planning areas in California to ensure that the plans do not rely on the associated emissions reductions from the provisions excluded from the August 14, 2015 SIP submittal.

5. Will the state have adequate personnel and funding for the regulations?

In its SIP revision submittal, CARB refers to the annual approval by the California Legislature of funding and staff resources for carrying out CAA-related responsibilities and notes that a large portion of CARB's budget has gone toward meeting CAA mandates.⁸ CARB indicates that a majority of CARB's funding comes from dedicated fees collected from regulated emission sources and other sources such as vehicle registration fees and vehicles license plate fees and that these funds can only be used for air pollution control activities. *Id.* For the 2014–2015 budget cycle, CARB had over 700 positions and almost \$500 million dedicated for the mobile source program developing and enforcing regulations. *Id.* Given the longstanding nature of CARB's mobile source program, and its documented effectiveness at achieving significant reductions from mobile sources, we find that CARB has provided necessary assurances that the state has adequate personnel and funding to carry out the mobile source regulations submitted for approval as part of the California SIP.

⁶ These concepts are discussed in detail in an EPA memorandum from J. Craig Potter, EPA Assistant Administrator for Air and Radiation, *et al.*, titled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," dated September 23, 1987.

⁷ The only such provisions in any of the submitted regulations are a sunset provision for alternative requirements in the ZEV regulations at 13 CCR section 1962.1(b)(2)(B)(3.), and a sunset review of the on-road motorcycle standards at 13 CCR section 1958(h). The latter provision requires CARB to review the on-road motorcycle standards in section 1958 to determine whether they should be retained, revised, or repealed. Any such revision or rescission would not become effective automatically, but would require rulemaking by CARB, and may also require a waiver from the EPA depending on the nature or the revision.

⁸ Letter from Richard W. Corey, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region IX, August 14, 2015.

6. EPA's Evaluation Conclusion

Based on the above discussion, we believe these regulations are consistent with the relevant CAA requirements, and with relevant EPA policies and guidance.

C. Proposed Action and Request for Public Comment

Under section 110(k)(3) of the CAA, and for the reasons given above, we are proposing to approve a SIP revision submitted by CARB on August 14, 2015 that includes certain sections of title 13 and title 17 of the California Code of Regulations that establish standards and other requirements relating to the control of emissions from new and in-use on-road and off-road vehicles and engines. We are proposing to approve these regulations as part of the California SIP because we believe they fulfill all relevant CAA requirements. We will accept comments from the public on this proposal until December 14, 2015. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP for the State of California.

IV. Incorporation by Reference

In this proposed rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference certain sections of title 13 and title 17 of the California Code of Regulations that establish standards and other requirements relating to the control of emissions from new and in-use on-road and off-road vehicles and engines, as described in section II of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not

impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
 - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
 - Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 30, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2015-28614 Filed 11-10-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2015-0431; FRL-9936-68-Region 6]

Approval and Promulgation of Implementation Plans; State of New Mexico/Albuquerque-Bernalillo County; Infrastructure and Interstate Transport SIP 2010 Sulfur Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) submission from the State of New Mexico on behalf of Albuquerque-Bernalillo County for the 2010 Sulfur Dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). The submittal addresses how the existing SIP provides for implementation, maintenance, and enforcement of the 2010 SO₂ NAAQS (infrastructure SIP or i-SIP). This i-SIP ensures that the State's SIP for Albuquerque-Bernalillo County is adequate to meet the state's responsibilities under the CAA, including the four CAA requirements for interstate transport of SO₂ emissions. **DATES:** Written comments must be received on or before December 14, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R06-OAR-2015-0431, by one of the following methods:

- www.regulations.gov. Follow the online instructions.
- **Email:** Tracie Donaldson at Donaldson.tracie@epa.gov.
- **Mail or delivery:** Mary Stanton, Chief, Air Grants Section (6PD-S), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2015-

0431. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit electronically any information that you consider to be CBI or other information whose disclosure is restricted by statute. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional information on submitting comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, telephone 214-665-6633, donaldson.tracie@epa.gov. To inspect the hard copy materials, please schedule an appointment with Tracie

Donaldson or Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

I. Background

On June 22, 2010, EPA revised the primary SO₂ NAAQS (hereafter the 2010 SO₂ NAAQS) to establish a new 1-hour standard, with a level of 75 parts per billion (ppb), based on the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations (75 FR 35520). Each state must submit an i-SIP within three years after the promulgation of a new or revised NAAQS. Section 110(a)(2) of the CAA includes a list of specific elements the i-SIP must meet. EPA issued guidance addressing the i-SIP elements for NAAQS on September 13, 2013.¹ The Secretary of the New Mexico Environmental Department (NMED) submitted an i-SIP revision on behalf of Albuquerque-Bernalillo County to address this revised NAAQS on June 11, 2015.

EPA is proposing to approve the Albuquerque-Bernalillo County, New Mexico i-SIP submittal for the 2010 SO₂ NAAQS,² as meeting the requirements of an i-SIP.

II. EPA's Evaluation of New Mexico's i-SIP Submittal

Below is a summary of EPA's evaluation of the Albuquerque-Bernalillo County, New Mexico i-SIP for each applicable element of 110(a)(2) A-M. The Albuquerque-Bernalillo County Air Quality Control Board (Air Board) provided a demonstration of how the existing Albuquerque-Bernalillo County, New Mexico SIP met all the requirements of the 2010 SO₂ NAAQS on June 11, 2015.

(A) *Emission limits and other control measures:* CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control

¹ "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

² Additional information on: The history of SO₂, its levels, forms and, determination of compliance; EPA's approach for reviewing i-SIPs; the details of the SIP submittal and EPA's evaluation; the effect of recent court decisions on i-SIPs; the statute and regulatory citations in the New Mexico SIP specific to this review; the specific i-SIP applicable CAA and EPA regulatory citations; **Federal Register** Notice citations for New Mexico SIP approvals; New Mexico's minor New Source Review program and EPA approval activities; and, New Mexico's Prevention of Significant Deterioration (PSD) program can be found in the Technical Support Document (TSD).

measures, means or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act, and other related matters as needed to implement, maintain and enforce each of the NAAQS.³

Legislative authority for Albuquerque-Bernalillo County's air quality program, codified in Chapter 74 *Environmental Improvement*, Article 2, *Air Pollution*, of the New Mexico statutes, gives the Air Board and the Albuquerque Environmental Health Department's Air Quality Program (AQP) the authority to implement the CAA in Albuquerque-Bernalillo County, New Mexico. Enforceable emission limitations and other control measures are authorized by the New Mexico Air Quality Control Act (AQCA), which established the Air Board and those provisions of New Mexico Administrative Code (NMAC) Title 20, *Environmental Protection*, Chapter 11, *Albuquerque-Bernalillo County Air Quality Control Board*. They can adopt emission standards and compliance schedules applicable to regulated entities; emission standards and limitations and any other measures necessary for attainment and maintenance of national standards; and, enforce applicable laws, regulations, standards and compliance schedules, and seek injunctive relief within the boundaries of Bernalillo County. This authority has been employed to adopt and submit multiple revisions to the Albuquerque-Bernalillo County, New Mexico State Implementation Plan. The approved SIP for Albuquerque-Bernalillo County, New Mexico is documented at 40 CFR part 52.1620, Subpart GG.⁴

(B) *Ambient air quality monitoring/data system:* The SIP must provide for establishment and implementation of ambient air quality monitors, collection and analysis of monitoring data, and providing such data to EPA upon request.

³ The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2010 SO₂ NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

⁴ <http://www.ecfr.gov/cgi-bin/text-idx?SID=64943a7422504656d8d72e9d6f87f177&mc=true&node=sp40.5.52&rgn=div6>.

The AQCA provides AQP with the authority to monitor ambient air quality in the county (NMSA 1978, section 74–2–5). AQP maintains a monitoring network for the NAAQS and submits an annual Network Assessment to EPA. AQP's 2014 Air Monitoring Network Plan is the most recently EPA-approved network monitoring plan—approved by EPA on February 3, 2015. All monitoring data is measured using EPA approved methods and subject to the EPA quality assurance requirements. AQP submits all required data to EPA, following the EPA regulations. The monitoring network was approved into the SIP (46 FR 4005, August 6, 1981) and undergoes annual review by the EPA.⁵ In addition, AQP conducts an assessment of the monitoring network every 5 years. The most recent of these 5-year monitoring network assessments was conducted by AQP and approved by EPA. Data is available upon request and in the EPA Air Quality System (AQS) database.

(C) *Program for enforcement* The SIP must include the following three elements: (1) A program providing for enforcement of the measure in paragraph A above; (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS (*i.e.*, state-wide permitting of minor sources); and (3) a permit program to meet the major source permitting requirements of the CAA (for areas designated as attainment or unclassified for the NAAQS in question).⁶

(1) *Enforcement of SIP Measures.* As noted in (A), the state statutes provide authority for the AQP to enforce the requirements of the AQCA within Albuquerque-Bernalillo County, and any regulations, permits, or final compliance orders. Its statutes also provide the AQP with general enforcement powers. Among other things, they can file lawsuits to compel compliance with the statutes and regulations; commence civil actions; issue field citations; conduct investigations of regulated entities; collect criminal and civil penalties; develop and enforce rules and standards related to protection of air quality; issue compliance orders; pursue criminal prosecutions; investigate, enter into remediation agreements; and issue emergency cease and desist orders. The AQCA also provides additional

enforcement authorities and funding mechanisms.

(2) *Minor New Source Review (NSR).* The SIP is required to include measures to regulate construction and modification of stationary sources to protect the NAAQS. Albuquerque-Bernalillo County's minor NSR permitting requirements are approved as part of the SIP.⁷

(3) *Prevention of Significant Deterioration (PSD) permit program.* Albuquerque-Bernalillo County's PSD portion of the SIP covers all NSR regulated pollutants as well as the requirements for the 2010 SO₂ NAAQS and has been approved by EPA.⁸ EPA approved revisions that address the requirements of the EPA's May 2008, July 2010, and October 2012 PM_{2.5} PSD Implementation Rules and to incorporate revisions consistent with the EPA's March 2011 Fugitives Interim Rule, July 2011 Greenhouse Gas (GHG) Biomass Deferral Rule, and July 2012 GHG Tailoring Rule Step 3 and GHG PALs Rule (80 FR 52401, August 31, 2015).

(D) *Interstate and international transport:* The requirements for interstate transport of SO₂ emissions are that the SIP contain adequate provisions prohibiting emissions to other states which will (1) contribute significantly to nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with measures required to prevent significant deterioration or (4) interfere with measures to protect visibility (CAA 110(a)(2)(D)(i)).

With respect to the requirements of section 110(a)(2)(D)(i)(I), the scarcity of major sources of SO₂, the minimal amount of emissions from these sources, and the large geographic distance between those sources and other states, we find that Albuquerque-Bernalillo County does not contribute to nonattainment nor interfere with maintenance NAAQS.

With respect to the PSD requirements of section 110(a)(2)(D)(i)(II), we note that Albuquerque-Bernalillo County's

⁷ EPA is not proposing to approve or disapprove Albuquerque-Bernalillo County's existing minor NSR program to the extent that it may be inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for EPA to approve the infrastructure SIP for element C (*e.g.*, 76 FR 41076–41079, July 13, 2011). EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs.

⁸ As discussed further in the TSD.

satisfaction of the applicable infrastructure SIP PSD requirements for attainment/unclassified areas with regards to the 2010 SO₂ NAAQS have been detailed in the section addressing section 110(a)(2)(C). Two revisions to the SIP to update the Albuquerque-Bernalillo County PSD SIP permitting program consistent with federal requirements have been approved (80 FR 52401, August 31, 2015). These approvals contain revisions to address the requirements of the EPA's May 2008, July 2010, and October 2012 PM_{2.5} PSD Implementation Rules and to incorporate revisions consistent with the EPA's March 2011 Fugitives Interim Rule, July 2011 Greenhouse Gas (GHG) Biomass Deferral Rule, and July 2012 GHG Tailoring Rule Step 3 and GHG PALs Rule.

For sources not subject to PSD for any one of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS, Albuquerque-Bernalillo County has adopted the nonattainment new source review (NSR) provisions required for the 2010 SO₂ NAAQS and other NAAQS at 20.11.60 NMAC—*Permitting in Nonattainment Areas.*

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), this requirement was met by our approval of the regional haze and visibility component of the SIP.

There are no final findings by EPA that New Mexico air emissions affect other countries. Therefore, Albuquerque-Bernalillo County, New Mexico has no international obligations. If EPA makes such a finding, AQP will consult with EPA.

Section 110(a)(2)(D)(ii) also requires that the SIP ensure compliance with the applicable requirements of sections 126 and 115 of the CAA, relating to interstate and international pollution abatement, respectively. Section 126(a) of the CAA requires new or modified sources to notify neighboring states of potential impacts from sources within the State. Albuquerque-Bernalillo County regulations require that affected states, tribes and federal land managers receive notice prior to the commencement of any construction or significant modification of a major source. In addition, no sources located in Albuquerque-Bernalillo County have been identified by EPA as having any interstate impacts under section 126 in any pending actions relating to any air pollutant.

Section 115 of the CAA authorizes EPA to require a state to revise its SIP under certain conditions to alleviate international transport into another

⁵ A copy of the 2014 Annual Air Monitoring Network Plan and EPA's approval letter dated February 3, 2015, are included in the docket for this proposed rulemaking.

⁶ As discussed in further detail in the TSD.

country. There are no final findings under section 115 of the CAA against New Mexico with respect to any air pollutant. Thus, the State's SIP does not need to include any provisions to meet the requirements of section 115.

Based upon review of the County's infrastructure SIP submission for the 2010 SO₂ NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in New Mexico's SIP, EPA believes that Albuquerque-Bernalillo County has the adequate infrastructure needed to address sections 110(a)(2)(D)(i)(I) and (II), and 110(a)(2)(D)(ii) for the 2010 SO₂ NAAQS and is proposing to approve this element of the June 11, 2015, submission.

(E) Adequate authority, resources, implementation, and oversight: The SIP must provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements relating to state boards; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan.

Both elements A and E address the requirement that there is adequate authority to implement and enforce the SIP and that there are no legal impediments.

This i-SIP submission for the 2010 SO₂ NAAQS describes the SIP regulations governing the various functions of personnel within the AQP and the Air Board, including the administrative, technical support, planning, enforcement, and permitting functions of the program.

With respect to funding, the resources to carry out the plan are provided through General Funds, Permit Fees and the CAA grant process. Permit Fees are collected under the authority of section 74-2-7.

As required by the CAA and the Environmental Improvement Act (EIA), the SIP stipulates that any members of the board or body, or the head of an agency with similar powers, adequately disclose any potential conflicts of interest. NMSA 1978 section 74-1-4 provides the Air Board contain at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to or who appear

before the board on issues related to the CAA or the AQCA. Board members are required to recuse themselves from rule-makings in which their impartiality may reasonably be questioned.

With respect to assurances that the Air Board has responsibility to implement the SIP adequately when it authorizes local or other agencies to carry out portions of the plan, the EIA and the AQCA designate the Air Board as the primary air pollution control agency within Albuquerque-Bernalillo County. The statutes allow for local agencies to carry out some or all of the Act's responsibilities.

The Albuquerque/Bernalillo County Air Quality Control Board assumes jurisdiction for local administration and enforcement of the AQCA in Bernalillo County. There are Albuquerque/Bernalillo County SIP provisions which are part of the New Mexico SIP.⁹

(F) Stationary source monitoring system: The SIP requires the establishment of a system to monitor emissions from stationary sources and to submit periodic emission reports. It must require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from sources, and require that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

Requirements in 20.11.47 NMAC, *Emission Inventory Requirements* provide for the reporting of emissions inventories in a format established by AQP on a schedule prescribed by the regulation. There also are SIP state regulations pertaining to sampling and testing and requirements for reporting of emissions inventories. In addition, SIP rules establish general requirements for maintaining records and reporting emissions. This information is used to track progress towards measuring the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with SIP regulations and additional EPA requirements.

(G) Emergency authority: The SIP must provide for authority to address

activities causing imminent and substantial endangerment to public health or welfare or the environment and to include contingency plans to implement such authorities as necessary.

The AQCA provides the New Mexico Environment Department with authority to address environmental emergencies, inclusive of contingency plans to implement emergency episode provisions.

Pursuant to 40 CFR part 51, subpart H, *Prevention of Air Pollution Emergency Episodes*, on January 26, 1989, the Air Board adopted the *Air Pollution Contingency Plan for Bernalillo County* [August 21, 1991, 56 FR 38074; 40 CFR 52.1639, *Prevention of Air Emergency Episodes*], which is part of the SIP, and covers air pollution episodes and the occurrence of an emergency due to the effects of the pollutants on the health of persons.

(H) Future SIP revisions: States must have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

Albuquerque-Bernalillo County's SIP is a compilation of regulations, plans and submittals that act to improve and maintain air quality in accordance with national standards. The authority to develop or revise the SIP is based on the authority to adopt new regulations and revise existing regulations to meet the NAAQS. NMSA 1978 section 74-7-5 gives the board the authority to perform these functions. Section 74-7-5 also gives the board the authority to adopt regulations to abate, control and prohibit air pollution throughout Bernalillo County in accordance with the *State Rules Act*. Nothing in New Mexico's statutory or regulatory authority prohibits Albuquerque-Bernalillo County from revising the SIP in the event of a revision to the NAAQS. The AQCA specifically requires revisions to the SIP if the scenarios set forth in Section 110(a)(2)(H) occur.

(I) Nonattainment areas: The CAA section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas.

As noted earlier, EPA does not expect infrastructure SIP submissions to address subsection (I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to

⁹ Albuquerque/Bernalillo County SIP <http://yosemite.epa.gov/r6/Sip0304.nsf/home!OpenView&Start=1&Count=30&Collapse=4.4#4.4> or <https://www.law.cornell.edu/cfr/text/40/52.1620>.

different submission schedules than those for section 110 infrastructure elements. Instead, EPA will take action on part D attainment plan SIP submissions through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D.

(J) *Consultation with government officials, public notification, PSD and visibility protection:* The SIP must meet the following three requirements: (1) Relating to interagency consultation regarding certain CAA requirements; (2) relating to public notification of NAAQS exceedances and related issues; and, (3) prevention of significant deterioration of air quality and visibility protection.

(1) *Interagency consultation:* As required by the AQCA, there must be a public hearing before the adoption of any regulations or emission control requirements and all interested persons must be given a reasonable opportunity to submit data, view documents, or argue orally or in writing and to examine testimony of witnesses from the hearing. In addition, the AQCA provides for the power and duty to “advise, consult, contract with and cooperate with local authorities, other states, the federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control . . .” Furthermore, New Mexico’s PSD SIP rules mandate public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, tribal authorities, and Federal Land Managers (FLMs) whose lands may be affected by emissions from the source or modification. The State’s Transportation Conformity SIP rules also provide procedures for interagency consultation, resolution of conflicts, and public notification.

(2) *Public Notification:* The i-SIP provides the SIP regulatory citations requiring the Air Board to regularly notify the public of instances or areas in which any NAAQS are exceeded, advise the public of the health hazard associated with such exceedances, and enhance public awareness of measures that can prevent such exceedances and ways in which the public can participate in efforts to improve air quality. 20.11.82 NMAC, *Rulemaking Procedures—Air Quality Control Board*, stipulates notice requirements for rulemaking and is used as a guide for notice requirements when adopting SIPs.

(3) *PSD and Visibility Protection:* The PSD requirements here are the same as those addressed under (C). The

Albuquerque-Bernalillo County, New Mexico SIP requirements relating to visibility and regional haze are not affected when EPA establishes or revises a NAAQS. Therefore, EPA believes that there are no new visibility protection requirements due to the revision of the NAAQS, and consequently there are no newly applicable visibility protection obligations pursuant to infrastructure element J after the promulgation of a new or revised NAAQS.

(K) *Air quality and modeling/data:* The SIP must provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

AQP has the duty, authority and technical capability to conduct air quality modeling, pursuant to the AQCA, in order to assess the effect on ambient air quality of relevant pollutant emissions; and can provide relevant data as part of the permitting and NAAQS implementation process. AQP follows EPA guidelines for air dispersion modeling. Upon request, AQP will submit current and future data relating to air quality modeling to EPA.

(L) *Permitting Fees:* The SIP must require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under the CAA, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by EPA.

The fee requirements of 20.11.2 NMAC have been approved by EPA as meeting the CAA requirements and were incorporated into the Albuquerque-Bernalillo County, New Mexico SIP (45 FR 24468, April 10, 1980). Albuquerque-Bernalillo County’s title V operating permit program codified at 20.11.42 NMAC, *Operating Permits*, was approved by EPA on September 8, 2004 (69 FR 54244–47). In addition, see element (E) above for the description of the mandatory collection of permitting fees outlined in the SIP.

(M) *Consultation/participation by affected local entities:* The SIP must provide for consultation and participation by local political subdivisions affected by the SIP.

New Mexico State Statute Section 74–2–5.2 *State Air Pollution Control Agency; Specific Duties and Powers of the Department*, states that, “The department is the state air pollution

control agency for all purposes under federal legislation relating to pollution. The department is required to “advise, consult, contract and cooperate with local authorities, other states, the federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control.” Also see element (J) above for a discussion of the SIP’s public participation process, the authority to advise and consult, and the PSD SIP’s public participation requirements.

III. Proposed Action

EPA is proposing to approve the June 11, 2015, infrastructure SIP submission from Albuquerque-Bernalillo County, New Mexico, which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2010 SO₂ NAAQS. Specifically, EPA is proposing to approve the following infrastructure elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is not proposing action pertaining to section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions as EPA believes these need not be addressed in the i-SIP. Based upon review of the state’s infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in these submissions or referenced in Albuquerque-Bernalillo County, New Mexico’s SIP, EPA believes that Albuquerque-Bernalillo County, New Mexico has the infrastructure in place to address all applicable required elements of sections 110(a)(1) and (2) to ensure that the 2010 SO₂ NAAQS are implemented in the county. We also are proposing to approve the State’s demonstration that it meets the four statutory requirements for interstate transport of SO₂ emissions.

IV. Statutory and Executive Order Reviews

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide (SO₂).

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 27, 2015.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2015-28353 Filed 11-10-15; 8:45 am]

BILLING CODE 6560-50-P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 722, 729, 731, and 752

RIN 0412-AA78

Various Administrative Changes and Clauses to the USAID Acquisition Regulation

AGENCY: U.S. Agency for International Development.

ACTION: Proposed rule.

SUMMARY: The U.S. Agency for International Development (USAID) seeks public comment on a proposed rule that would revise the Agency for International Development Acquisition Regulation (AIDAR) to maintain consistency with Federal and Agency regulations and incorporate current and new USAID clauses into the regulation.

DATES: Comments must be received no later than December 14, 2015.

ADDRESSES: Address all comments concerning this notice to Marcelle J. Wijesinghe, Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P), Room 867J, SA-44, Washington, DC 20523-2052. Submit comments, identified by title of the action and Regulatory Information Number (RIN) by any of the following methods:

1. Through the Federal eRulemaking Portal at <http://www.regulations.gov> by following the instructions for submitting comments.

2. *By Email:* Submit electronic comments to both mwijesinghe@usaid.gov and lbond@usaid.gov. See **SUPPLEMENTAL INFORMATION** for file formats and other information about electronic filing.

3. *By Mail addressed to:* USAID, Bureau for Management, Office of Acquisition & Assistance, Policy Division, Room 867J, SA-44, Washington, DC 20523-2052.

FOR FURTHER INFORMATION CONTACT: Lyudmila Bond, Telephone: 202-567-4753 or Email: lbond@usaid.gov.

SUPPLEMENTARY INFORMATION:

A. Instructions

All comments must be in writing and submitted through one of the methods specified in the Addresses section above. All submissions must include the title of the action and RIN for this rulemaking. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message.

Comments submitted by email must be included in the text of the email or attached as a PDF file. Please avoid

using special characters and any form of encryption. Please note that USAID recommends sending all comments to the Federal eRulemaking Portal because security screening precautions have slowed the delivery and dependability of surface mail to USAID/Washington.

Three days after receipt of a comment and until finalization of the action, all comments will be made available at <http://www.regulations.gov> for public review without change, including any personal information provided. We recommend you do not submit information that you consider Confidential Business Information (CBI) or any information that is otherwise protected from disclosure by statute.

USAID will only address comments that explain why the rule would be inappropriate, ineffective or unacceptable without a change. Comments that are insubstantial or outside the scope of the rule will not be considered.

B. Background

USAID is seeking comments on the proposed rule as described below:

- FAR subpart 22.8 prohibits federal contractors performing in the U.S. from discrimination with regard to race, color, religion, sex, national origin, disability, age, genetic information, or veteran status. As a matter of policy, the Agency encourages all USAID contractors performing and recruiting entirely outside the United States to apply these same standards of nondiscrimination in their workplace. The provision entitled “Nondiscrimination” contains language that encourages contractors performing and recruiting entirely outside the United States to establish comprehensive nondiscrimination policies for their workplaces. The provision was implemented on an interim basis in 2012 through Agency policy found in ADS 302 Mandatory Reference, Special Provisions for Acquisition and is hereby formally incorporated in the AIDAR without revision at 752.222-71. The Agency believes that the transfer of the clause from the internal Agency policy into the AIDAR will have no impact on contractors.

- Section 579 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of FY 2003 (Pub. L. 108-7) and similar sections in subsequent acts require certain steps to prevent countries from imposing taxes [defined as Value Added Tax (VAT) or customs duties] on U.S. foreign assistance. If taxes or customs duties are imposed, the foreign government must reimburse the amount

of such taxes and duties to the U.S. Government. The Act also requires certain reporting to Congress.

The provision at 752.229–71 entitled “Reporting of Foreign Taxes”, implemented on an interim basis in 2007 through Agency policy found in ADS 302 Mandatory Reference, Special Provisions for Acquisition, specifies that the contractor must submit certain reports to the Contracting Officer’s Representative, with copies to the relevant Embassy, the Mission, or the Bureau for Management, Office of the Chief Financial Officer, Cash Management and Payments Division. AIDAR part 729, subpart 729.4 and sections 729.204–70 and 752.229–70 are added to formally incorporate this requirement into the AIDAR. The Agency believes that the transfer of the clause from the internal Agency policy into the AIDAR will have no impact on contractors.

- The Executive Order 13589 “Promoting Efficient Spending” dated November 9, 2011, directed agencies to reduce administrative costs by improving operations, increasing efficiency, and cutting unnecessary spending. To achieve savings, agencies were to improve efficiencies in various administrative areas, including conference expenditures. OMB memorandums M–11–35 “Eliminating Excess Conference Spending and Promoting Efficiency in Government” dated September 21, 2011, and M–12–12 “Promoting Efficient Spending to Support Agency Operations” dated May 11, 2012, further instructed all agencies “to conduct a thorough review of the policies and controls associated with conference-related activities and expenses” and to “exercise discretion and judgment in ensuring that conference expenses are appropriate, necessary, and managed in a manner that minimizes expense to taxpayers”.

To mitigate the risk of inappropriate spending, USAID revised Automated Directive System (ADS) 580 on agency internal policies and procedures pertaining to conferences funded by USAID and implemented a new clause entitled “Conference Planning and Required Approvals”, applicable to all contracts with an anticipated need for USAID-funded conferences. The clause requires contractors to obtain USAID approval prior to committing costs related to conferences funded in whole or in part with USAID funds when:

- (1) Twenty (20) or more USAID employees are expected to attend.
- (2) The net conference expense funded by USAID will exceed \$100,000 (excluding salary of employees),

regardless of the number of USAID participants.

The clause was implemented on an interim basis in 2013 through Agency policy found at ADS 302 Mandatory Reference, Special Provisions for Acquisition and is hereby formally incorporated into the AIDAR without revision. The Agency believes that the transfer of the clause from the internal Agency policy into the AIDAR will have no impact on contractors.

- In support of USAID’s procurement reform and to expedite award modifications that affect multiple awards, the Bureau for Management, Office of Acquisition and Assistance (M/OAA) has created a separate online portal for Implementing Partner Notices (IPN) for acquisition awards. The IPN Portal, located at <https://sites.google.com/site/usaidipnforacquisitions/>, is the single point where USAID uploads proposed universal bilateral modifications for awards, which can be accessed electronically by registered contractors. The IPN Portal is also used to provide notices to USAID contractors who register with the IPN Portal. The AIDAR clause 752.7036, entitled “USAID Implementing Partner Notices (IPN) Portal for Acquisition”, directs contractors to register with the IPN Portal. Registered contractors will receive automatic email notifications when the IPN Portal is updated with proposed award modifications and/or notices. Partners may download and sign the proposed modification, and send it to the contracting officer for signature (execution) and distribution in accordance with the terms of the clause.

Proposed bilateral modifications provided through the IPN Portal are not effective until the contractor and the contracting officer sign the modification. The requirement to register in the IPN portal applies to all contracts except for orders under indefinite delivery contracts issued pursuant to (48 CFR) FAR subpart 16.5; orders under Federal Supply (GSA) Schedules issued pursuant to (48 CFR) FAR subpart 8.4; and contracts and purchase orders awarded under the simplified acquisitions procedures of (48 CFR) FAR part 13. The clause was implemented on an interim basis in July 2014 through Agency policy found at ADS 302 Mandatory Reference, Special Provisions for Acquisition and is hereby formally incorporated into the AIDAR without revision. The Agency believes that the transfer of the clause from the internal agency policy into the AIDAR will have no impact on contractors.

- Research indicates that persons with a history and proclivity to abusing children will often seek professional

positions which could give them access to vulnerable individuals. Often they will seek employment within countries with social welfare, protection, and judicial systems too weak or underdeveloped to protect children and other vulnerable populations against abuse and exploitation. Many USAID missions and projects are located in countries with ineffective systems. To protect children involved in or coming into contact with USAID programs from abuse, exploitation or neglect, USAID has established Child Safeguarding Standards. These standards are designed to complement the USAID Counter Trafficking in Persons (C–TIP) Code of Conduct by expanding the range of actions prohibited by USAID under the C–TIP Code of Conduct to include abuse, exploitation, or neglect of children. The mandatory requirements established by these standards satisfy obligations established in the U.S. Government Action Plan on Children in Adversity and the provisions of Public Law 109–95—The Assistance for Orphans and other Vulnerable Children Act of 2005 (Pub. L. 109–95).

The standards applicable to USAID contractors are implemented through a new clause at 752.7037, Child Safeguarding. The clause requires contractors to: (1) Ensure compliance with local child welfare and protection legislation or international standards; (2) prohibit all personnel from engaging in child abuse, exploitation, or neglect; (3) consider child safeguarding in project planning and implementation; (4) apply measures to reduce the risk of child abuse, exploitation, or neglect; (5) promote child-safe screening procedures for personnel; and (6) establish procedures to ensure that contractor personnel recognize child abuse, exploitation, or neglect, report and investigate allegations and take appropriate actions in response to such allegations.

C. Regulatory Planning and Review

This proposed rule has been determined to be “nonsignificant” under the Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, is not subject to review. This proposed rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The proposed rule does not establish a new collection of information as contemplated by the Paperwork Reduction Act nor will it have an impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601,

et seq. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

List of Subjects in 48 CFR Parts 722, 729, 731, and 752

Government procurement.

For the reasons discussed in the preamble, USAID proposes to amend 48 CFR chapter 7 as set forth below:

CHAPTER 7—AGENCY FOR INTERNATIONAL DEVELOPMENT

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 722—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

■ 1. The authority citation for 48 CFR part 722 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

Subpart 722.8—Equal Employment Opportunity

■ 2. Revise 722.810 to read as follows:

722.810 Solicitation provisions and contract clauses.

(a) The contracting officer must insert the clause at 752.222–70, USAID Disability Policy in section I of all solicitations and resulting contracts.

(b) The contracting officer must insert the clause at 752.222–71, Nondiscrimination in section I of all solicitations and resulting contracts.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

■ 3. Add part 729 to subchapter E to read as follows.

PART 729—TAXES

Subpart 729.4—Contract Clauses

729.402–70 Foreign contracts.

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

Subpart 729.4—Contract Clauses

729.402–70 Foreign contracts.

(a) Section 579 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of FY 2003 requires certain steps to prevent countries from imposing taxes [defined as Value Added Tax (VAT) or customs duties] on U.S. foreign assistance, or if imposed, requires the countries to reimburse the assessed taxes or duties. The Act also requires certain reporting to Congress. The

Department of State has published guidance for implementing this section of the Act.

(b) Contracting Officers (COs) must insert the clause at 752.229–71, Reporting of Foreign Taxes in section I of solicitations and resulting contracts that obligate or subobligate FY 2003 or later funds except for the following:

(1) Contracts funded with Operating Expense, Public Law 480 funds, or trust funds; or

(2) Contracts where there will be no commodity transactions in a foreign country over the amount of \$500.

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 4. The authority citation for 48 CFR part 731 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

Subpart 731.2—Contracts With Commercial Organizations

■ 5. Add 731.205–43 to read as follows.

731.205–43 Trade, business, technical and professional activity costs—USAID conference approval requirements.

(a) The contractor must receive prior written approval from the contracting officer, or the contracting officer's representative (COR), if delegated in the Contracting Officer's Representative Designation Letter, for costs related to conferences funded in whole or in part with USAID funds when:

(1) Twenty (20) or more USAID employees are expected to attend.

(2) The net conference expense funded by USAID will exceed \$100,000 (excluding salary of employees), regardless of the number of USAID participants.

(b) Contracting officers must insert the clause at 752.231–72 in all USAID-funded solicitations and contracts anticipated to include a requirement for a USAID-funded conference. See (48 CFR) AIDAR 752.231–72 for the definition of a conference and specific requirements and procedures.

SUBCHAPTER H—CLAUSES AND FORMS

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. The authority citation for 48 CFR part 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

■ 7. Add 752.222–71 to read as follows:

752.222–71 Nondiscrimination

As prescribed in (48 CFR) AIDAR 722.810(b), insert the following clause in section I of all solicitations and resulting contracts.

Nondiscrimination (June 2012)

FAR Part 22 and the clauses prescribed in that part prohibit contractors performing in or recruiting from the U.S. from engaging in certain discriminatory practices. USAID is committed to achieving and maintaining a diverse and representative workforce and a workplace free of discrimination. Based on law, Executive Order, and Agency policy, USAID prohibits discrimination in its own workplace on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, disability, age, veteran's status, sexual orientation, genetic information, marital status, parental status, political affiliation, and any other conduct that does not adversely affect the performance of the employee. USAID does not tolerate any type of harassment, either sexual or nonsexual, of any employee or applicant for employment. Contractors are required to comply with the nondiscrimination requirements of the FAR.

In addition, the Agency strongly encourages all its contractors (at all tiers) to develop and enforce comprehensive nondiscrimination policies for their workplaces that include protection on these expanded bases, subject to applicable law.

(End of clause)

■ 8. Add 752.229–71 to read as follows:

752.229–71 Reporting of foreign taxes.

As prescribed in (48 CFR) AIDAR 729.402–70, insert the following clause in section I of applicable solicitations and resulting contracts. The contracting officer must insert address and point of contact at the Embassy, Mission, or M/CFO/CMF as appropriate under section (d) of this clause.

Reporting of Foreign Taxes (July 2007)

(a) The contractor must annually submit a report by April 16 of the next year.

(b) Contents of Report. The report must contain:

(1) Contractor name.
(2) Contact name with phone, fax number and email address.

(3) Contract number(s).
(4) Amount of foreign taxes assessed by a foreign government [each foreign government must be listed separately] on commodity purchase transactions valued at \$500 or more financed with U.S. foreign assistance funds under this agreement during the prior U.S. fiscal year.

(5) Only foreign taxes assessed by the foreign government in the country receiving U.S. assistance are to be reported. Foreign taxes by a third party foreign government are not to be reported. For example, if a contractor performing in Lesotho using foreign assistance funds should purchase commodities in South Africa, any taxes imposed by South Africa would not be

reported in the report for Lesotho (or South Africa).

(6) Any reimbursements received by the contractor during the period in paragraph (b)(4) of this clause regardless of when the foreign tax was assessed and any reimbursements on the taxes reported in paragraph (b)(4) of this clause received through March 31.

(7) Report is required even if the contractor did not pay any taxes during the reporting period.

(8) Cumulative reports may be provided if the contractor is implementing more than one program in a foreign country.

(c) *Definitions.* For purposes of this clause:

(1) *Agreement* includes USAID direct and country contracts, grants, cooperative agreements and interagency agreements.

(2) *Commodity* means any material, article, supply, goods, or equipment.

(3) *Foreign government* includes any foreign governmental entity.

(4) *Foreign taxes* means value-added taxes and customs duties assessed by a foreign government on a commodity. It does not include foreign sales taxes.

(d) *Where.* Submit the reports to: [CO must insert address and point of contact at the Embassy, Mission, or CFO/CMP as appropriate].

(e) *Subagreements.* The contractor must include this reporting requirement in all applicable subcontracts and other subagreements.

(f) For further information see <http://2001-2009.state.gov/s/d/rm/c10443.htm>.

(End of clause)

■ 9. Add 752.231–72 to read as follows:

752.231–72 Conference planning and required approvals.

As prescribed in (48 CFR) AIDAR 731.205–43, insert the following clause in section I of all solicitations and resulting contracts anticipated to include a requirement for a USAID-funded conference, as defined in the clause.

Conference Planning and Required Approvals (AUG 2013)

(a) *Definitions:*

Conference means a seminar, meeting, retreat, symposium, workshop, training activity or other such event that requires temporary duty travel of USAID employees. For the purpose of this policy, an employee is defined as a U.S. direct hire; personal services contractor, including U.S. PSCs, Foreign Service National (FSN)/Cooperating Country National (CCN) and Third Country National (TCN); or a Federal employee detailed to USAID from another government agency.

(b) The contractor must obtain USAID approval prior to committing costs related to conferences funded in whole or in part with USAID funds when:

(1) Twenty (20) or more USAID employees are expected to attend.

(2) The net conference expense funded by USAID will exceed \$100,000 (excluding salary of employees), regardless of the

number of USAID participants. Conferences approved at the time of award will be incorporated into the award. Any subsequent requests for approval of conferences must be submitted by the contractor to the USAID contracting officer representative (COR). The COR will obtain the required agency approvals and communicate such approvals to the contractor in writing.

(c) The request for conference approval must include:

(1) A brief summary of the proposed event;

(2) A justification for the conference and alternatives considered, *e.g.*, teleconferencing and videoconferencing;

(3) The estimated budget by line item (*e.g.*, travel and per diem, venue, facilitators, meals, equipment, printing, access fees, ground transportation);

(4) A list of USAID employees attending and a justification for each; and the number of other USAID-funded participants (*e.g.*, institutional contractors);

(5) The venues considered (including government-owned facility), cost comparison, and justification for venue selected if it is not the lowest cost option;

(6) If meals will be provided to local employees (a local employee would not be in travel status), a determination that the meals are a necessary expense for achieving Agency objectives; and

(7) A certification that strict fiscal responsibility has been exercised in making decisions regarding conference expenditures, the proposed costs are comprehensive and represent the greatest cost advantage to the U.S. Government, and that the proposed conference representation has been limited to the minimum number of attendees necessary to support the Agency's mission.

(End of clause)

■ 10. Add 752.7036 to read as follows:

752.7036 USAID Implementing Partner Notices (IPN) portal for acquisition.

Insert the clause at 752.7036 in section I of all solicitations and resulting contracts, except for orders under indefinite delivery contracts issued pursuant to (48 CFR) FAR subpart 16.5; orders under Federal Supply (GSA) Schedules issued pursuant to (48 CFR) FAR subpart 8.4; and contracts and purchase orders awarded under the simplified acquisitions procedures of (48 CFR) FAR part 13.

USAID Implementing Partner Notices (IPN) Portal for Acquisition (July 2014)

(a) *Definitions:*

Universal bilateral modification means a bilateral modification, as defined in FAR subpart 43.1, affecting all USAID awards or a class of awards, as specified in the Agency notification of such modification, that updates or incorporates new FAR or AIDAR clauses, other terms and conditions, or special requirements.

USAID Implementing Partner Notices (IPN) Portal for Acquisition (IPN Portal) means the single point where USAID uploads universal bilateral modifications, which can be

accessed electronically by registered USAID contractors. The IPN Portal is located at <https://sites.google.com/site/ipnforacquisitions/>.

IPN Portal Administrator means the USAID official designated by the M/OAA Director, who has overall responsibility for managing the USAID Implementing Partner Notices Portal for Acquisition.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor acknowledges the requirement to:

(1) Register with the IPN Portal if awarded a contract resulting from this solicitation, and

(2) Receive universal bilateral modifications of this contract and general notices through the IPN Portal.

(c) Procedure to register for notifications.

Go to: <https://sites.google.com/site/usaidipnforacquisitions/> and click the "Register" button at the top of the page. Contractor representatives must use their official organization email address when subscribing, not personal email addresses.

(d) *Processing of IPN portal modifications.*

(1) The contractor may access the IPN Portal at any time to review all IPN Portal modifications; however, the system will also notify the contractor by email when the USAID IPN Portal Administrator uploads a universal bilateral modification for contractor review and signature. Proposed IPN Portal modifications distributed through the IPN Portal are applicable to all awards, unless otherwise noted in the proposed modification.

(2) Within 15 calendar days from receipt of the notification email from the IPN Portal, the contractor must do one of the following:

(i) (A) Verify applicability of the proposed modification to their award(s) per the instructions provided with each modification;

(B) Download the modification and incorporate the following information on the SF30 form: Contract number, organization name, and organization mailing address as it appears in the basic award;

(C) Sign the hardcopy version; and

(D) Send the signed modification (by email or hardcopy) to the CO for signature.

Note: The contractor must not incorporate any other changes to the IPN Portal modification. Bilateral modifications provided through the IPN Portal are not effective until the both the contractor and the CO sign the modification;

(ii) Notify the Contracting Officer in writing if the modification requires negotiation of additional changes to terms and conditions of the contract; or

(iii) Notify the Contracting Officer that the contractor declines to sign the modification.

(3) Within 30 calendar days of receipt of a signed modification from the contractor, the CO must provide the fully executed modification to the contractor or initiate discussions with the contractor.

(End of clause)

■ 11. Add 752.7037 to read as follows:

752.7037 Child safeguarding standards.

Insert the clause at 752.7037, Child Safeguarding Standards, in section I of

all solicitations and contracts other than those for commercial items.

Child Safeguarding Standards (Date)

(a) Implementation of activities under this award may involve children, or personnel engaged in the implementation of the award may come into contact with children, which could raise the risk of child abuse, exploitation, or neglect within this award. The contractor agrees to abide by the following child safeguarding core principles:

(1) Ensure compliance with host country and local child welfare and protection legislation or international standards, whichever gives greater protection, and with U.S. law where applicable;

(2) Prohibit all personnel from engaging in child abuse, exploitation, or neglect;

(3) Consider child safeguarding in project planning and implementation to determine potential risks to children that are associated with project activities and operations;

(4) Apply measures to reduce the risk of child abuse, exploitation, or neglect, including, but not limited to, limiting unsupervised interactions with children; prohibiting exposure to pornography; and complying with applicable laws, regulations, or customs regarding the photographing, filming, or other image-generating activities of children;

(5) Promote child-safe screening procedures for personnel, particularly personnel whose work brings them in direct contact with children; and

(6) Have a procedure for ensuring that personnel and others recognize child abuse, exploitation, or neglect; mandating that

personnel and others report allegations; investigating and managing allegations; and taking appropriate action in response to such allegations, including, but not limited to, dismissal of personnel.

(b) The contractor must also include in the code of conduct for all personnel implementing USAID-funded activities, the child safeguarding principles in paragraphs (a)(1) through (6) of this clause.

(c) The following definitions apply for purposes of this clause:

(1) *Child*: A child or children are defined as persons who have not attained 18 years of age.

(2) *Child abuse, exploitation, or neglect*: Constitutes any form of physical abuse; emotional ill-treatment; sexual abuse; neglect or insufficient supervision; trafficking; or commercial, transactional, labor, or other exploitation resulting in actual or potential harm to the child's health, well-being, survival, development, or dignity. It includes, but is not limited to: Any act or failure to act which results in death, serious physical or emotional harm to a child, or an act or failure to act which presents an imminent risk of serious harm to a child.

(3) *Emotional abuse or ill treatment*: Constitutes injury to the psychological capacity or emotional stability of the child caused by acts, threats of acts, or coercive tactics. Emotional abuse may include, but is not limited to: Humiliation, control, isolation, withholding of information, or any other deliberate activity that makes the child feel diminished or embarrassed.

(4) *Exploitation*: Constitutes the abuse of a child where some form of remuneration is

involved or whereby the perpetrators benefit in some manner. Exploitation represents a form of coercion and violence that is detrimental to the child's physical or mental health, development, education, or well-being.

(5) *Neglect*: Constitutes failure to provide for a child's basic needs within USAID-funded activities that are responsible for the care of a child in the absence of the child's parent or guardian.

(6) *Physical abuse*: Constitutes acts or failures to act resulting in injury (not necessarily visible), unnecessary or unjustified pain or suffering without causing injury, harm or risk of harm to a child's health or welfare, or death. Such acts may include, but are not limited to: Punching, beating, kicking, biting, shaking, throwing, stabbing, choking, or hitting (regardless of object used), or burning. These acts are considered abuse regardless of whether they were intended to hurt the child.

(7) *Sexual abuse*: Constitutes fondling a child's genitals, penetration, incest, rape, sodomy, indecent exposure, and exploitation through prostitution or the production of pornographic materials.

(d) The contractor must insert this clause in all subcontracts under this award.

(End of clause)

Dated: August 25, 2015.

Deborah Broderick,

Acting Chief Acquisition Officer.

[FR Doc. 2015-27977 Filed 11-10-15; 8:45 am]

BILLING CODE 6116-01-P

Notices

Federal Register

Vol. 80, No. 218

Thursday, November 12, 2015

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

Forest Service

El Dorado County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The El Dorado County Resource Advisory Committee (RAC) will meet in Placerville, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. RAC information can be found at the following Web site: www.fs.usda.gov/eldorado.

DATES: The meeting will be held at 6 p.m. on December 14–15, 2015.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the El Dorado Center of Folsom Lake College, Community Room, 6699 Campus Drive, Placerville, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Eldorado National Forest (ENF) Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jennifer Chapman, RAC Coordinator, by

phone at 530–621–5280 or via email at jenniferachapman@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Provide a public forum;
2. Reconnect with RAC members;
3. Present summary report of previously authorized RAC projects;
4. Define this year's process for proposal consideration and selection; and
5. Discuss recruiting replacement RAC members.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing at least 7 days in advance of the meeting date to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Jennifer Chapman, RAC Coordinator, Eldorado NF Supervisor's Office, 100 Forni road, Placerville, California 95667; by email to jenniferachapman@fs.fed.us, or via facsimile to 530–621–5297.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: November 5, 2015.

Laurence Crabtree,

Forest Supervisor.

[FR Doc. 2015–28717 Filed 11–10–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by January 11, 2016.

FOR FURTHER INFORMATION CONTACT:

Thomas P. Dickson, Acting Director & Funds Control Officer, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave. SW., STOP 1522, Room 5164 South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. FAX: (202) 720–8435. Email: Thomas.Dickson@wdc.usda.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or

other technological collection techniques or other forms of information technology. Comments may be sent to: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., STOP 1522, Room 5164 South Building, Washington, DC 20250-1522. Telephone: (202) 690-4492, FAX: (202) 720-8435. Email: Thomas.Dickson@wdc.usda.gov.

Title: Deferment of RUS Loan Payments for Rural Development Projects.

OMB Control Number: 0572-0097.

Type of Request: Extension of currently approved information collection.

Abstract: The Deferment of Rural Utilities Service (RUS) Loan Payments for Rural Development Projects allows RUS electric and telecommunications borrowers to defer the payment of principal and interest on any insured or direct loan made under the Rural Electrification Act (RE Act) of 1936, as amended (7 U.S.C. 912). The purposes of the Deferment Program are to encourage borrowers to invest in and promote rural development and rural job creation projects that are based on sound economic and financial analyses. This program is administered through 7 CFR 1703, subpart H. The burden required by this collection consists of information that will allow the Agency to determine eligibility for deferment; specific purposes of the deferment; the term of the deferment; cost of the project and degree of participation from other source; and compliance with Agency sources; and compliance with Agency regulations and other regulation and legal requirements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.23 hours per response.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 9.

Estimated Total Annual Burden on Respondents: 11.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720-7853, FAX: (202) 720-8435. Email: MaryPat.Daskal@wdc.usda.gov.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 4, 2015.

Brandon McBride,

Administrator, Rural Utilities Service.

[FR Doc. 2015-28731 Filed 11-10-15; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Census Employment Inquiry

AGENCY: U.S. Census Bureau, 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: To ensure consideration, written comments must be submitted on or before January 11, 2016.

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 jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Richard Liquorie at Richard.T.Liquorie@census.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The BC-170 is used to collect information such as personal data and work experience from job applicants. Selecting officials review the information shown on the form to evaluate an applicant's eligibility for employment and to determine the best qualified applicants to fill Census jobs.

The BC-170 is used throughout the census and intercensal periods for the special census, one time or recurring survey operations and other decennial pretests. The Census Bureau uses different versions of the BC-170 in various circumstances to collect appropriate data from applicants. Applicants completing the form BC-170D for a census related position are applying for temporary jobs in office and field positions (clerks, enumerators, recruiting assistants, supervisors) during

the Decennial Census and Decennial Census Tests. In addition, the BC-170A may be used when applying for temporary/permanent office and field positions (clerks, field representatives, supervisors) on a recurring survey in one of the Census Bureau's six Regional Offices (ROs) throughout the United States. The Form BC-170B is used for special censuses for temporary field and office positions (enumerators, clerks, supervisors).

The use of this form is limited to only situations which require the establishment of a temporary office and/or involve special, one-time or recurring survey operations at one of the ROs. The form has been demonstrated to meet our recruitment needs for temporary workers and requires significantly less burden than the Office of Personnel Management (OPM) Optional Forms that are available for use by the public when applying for Federal positions. There are no proposed changes to the BC-170A and BC-170B.

Changes to the BC-170D have been made to help support movement from a fully paper job application process to a mostly online job application process and to support changes to the selection and hiring processes for related positions. Specific changes include:

1. Adding a Prior Work Experience section to collect information about prior work experience.
2. Deleting background information that was previously collected at the time of application such as—convictions, imprisonment, probation, or parole in the last 7 years; convictions by a military court-martial in the past 7 years; current charges for any violation of the law; firings from any job for any reason, quitting after being told that you would be fired, leaving any job by mutual agreement because of specific problems, or debarred from Federal employment by the Office of Personnel Management or any other Federal agency during the past 5 years; and delinquency on any Federal debt.
3. Creating an optional section on the form for questions which are needed for research and evaluation purposes but not necessary for selection purposes. The optional section will collect the applicant's level of education, how the applicant found out about the job, and the information to help determine whether applicants may be willing and/or able to use their personal smartphone for work.
4. Adding questions to gain more detail about current Federal, State, Local, or Tribal government employment, which could pose a conflict of interest with census jobs.

5. Adding categories to clarify the type of work that an applicant might be interested in.

6. Clarifying and updating instructions on the cover pages of the form and item specific instructions, and the privacy act statement.

7. Reformatting/rewording questions/items for clarification purposes.

8. Formatting of questions for collection on a paper form and electronic online job application.

II. Method of Collection

The Census Bureau requests continued Office of Management and Budget (OMB) approval for the BC-170A, BC-170B, and the BC-170D, Census Employment Inquiry, along with modifications to the paper form BC-170D and the implementation of an online job application process, which will collect the same information as presented on the BC-170D.

III. Data

OMB Control Number: 0607-0139.

Form Number(s): BC-170A, BC-170B, and BC-170D.

Type of Review: Regular submission.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 70,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 17,500.

Estimated Total Annual Cost to Public: \$0.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Title 13 U.S.C., Chapter 1, Subchapter II.

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: November 6, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015-28704 Filed 11-10-15; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-73-2015]

Foreign-Trade Zone 102—St. Louis, Missouri; Application for Subzone; H-J Enterprises, Inc./H-J International, Inc.; High Ridge, Missouri

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the St. Louis County Port Authority, grantee of FTZ 102, requesting subzone status for the facilities of H-J Enterprises, Inc./H-J International, Inc., located in High Ridge, Missouri. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on November 5, 2015.

The proposed subzone would consist of the following sites: *Site 1* (11.81 acres)—3010 High Ridge Boulevard, High Ridge; and, *Site 2* (15.18 acres)—6217 State Road PP, High Ridge. A notification of proposed production activity has been submitted and is being processed under 15 CFR 400.37 (Doc. B-68-2015).

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is December 22, 2015. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 6, 2016.

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

For further information, contact Camille Evans at Camille.Evans@trade.gov or (202) 482-2350.

Dated: November 5, 2015.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2015-28760 Filed 11-10-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-74-2015]

Foreign-Trade Zone 191—Palmdale, California; Application for Reorganization under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of Palmdale, California, grantee of FTZ 191, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on November 5, 2015.

FTZ 191 was approved by the FTZ Board on January 15, 1993 (Board Order 628, 58 FR 6614, February 1, 1993) and expanded on November 4, 2002 (Board Order 1252, 67 FR 69715, November 19, 2002) and January 22, 2004 (Board Order 1318, 69 FR 6252, February 10, 2004).

The current zone includes the following sites: *Site 1* (800 acres)—Lockheed Martin Aeronautics Project/Palmdale Regional Airport, Sierra Highway and Avenue M, Palmdale; *Site 2* (87 acres)—Antelope Valley Business Park, 10th Street West and Avenue M, Palmdale; *Site 3* (30 acres)—Freeway Business Center, West Avenue N and 12th Street West, Palmdale; *Site 4* (70 acres)—Palmdale Trade & Commerce Center, Avenue Q and 5th Street West, Palmdale; *Site 5* (118.2 acres)—Fairway Business Park, Division Street and Avenue O, Palmdale; *Site 6* (140 acres)—Sierra Gateway Center, Sierra Highway and Avenue O-8, Palmdale; *Site 7* (15 acres)—Pacific Business Park, 30th Street East and Avenue Q, Palmdale; *Site 8* (20 acres) Winnell Industrial Park, 3rd Street East and Avenue P, Palmdale; *Site 9* (33 acres)—

Park One Industrial Center, 10th Street East and Avenue P, Palmdale; *Site 10* (40 acres)—California City Industrial Park, Lindbergh Boulevard and Gnat Boulevard, California City; *Site 11* (91 acres)—Mojave Airport, Poole Street and Airport Boulevard, Mojave; and, *Site 12* (2.6 acres)—AMS Fulfillment, 29010 Commerce Center Drive, Valencia.

The grantee's proposed service area under the ASF would be portions of Los Angeles County, California, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to the Los Angeles/Long Beach U.S. Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its zone to include existing Site 1 and Site 5 as "magnet" sites and existing Site 12 as a "usage-driven" site. Additionally, as part of the reorganization, the applicant has requested that acreage be reduced at Site 1 (to 509.57 acres) and that Sites 2, 3, 4, 6, 7, 8, 9, 10 and 11 be removed from the zone due to changed circumstances. The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. No additional subzones/usage-driven sites are being requested at this time. The application would have no impact on FTZ 191's previously authorized subzone.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is January 11, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 26, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via www.trade.gov/ftz. For further information, contact Christopher Kemp

at Christopher.Kemp@trade.gov or (202) 482-0862.

Dated: November 5, 2015.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2015-28761 Filed 11-10-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-932]

Certain Steel Threaded Rod From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014

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

SUMMARY: The Department of Commerce (the "Department") published the *Preliminary Results* of the fifth administrative review of the antidumping duty order on certain steel threaded rod from the People's Republic of China ("PRC") on May 7, 2015.¹ We gave interested parties an opportunity to comment on the *Preliminary Results*. Based upon our analysis of the comments and information received, we made changes to the margin calculations for these final results. The final dumping margins are listed below in the "Final Results of Administrative Review" section of this notice. The period of review ("POR") is April 1, 2013, through March 31, 2014.

DATES: *Effective Date:* November 12, 2015.

FOR FURTHER INFORMATION CONTACT: Julia Hancock or Jerry Huang, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202-482-1394 or 202-482-4047, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Results* on May 7, 2015.² In accordance with 19 CFR 351.309, we invited parties to comment on our *Preliminary Results*. Between June 22, 2015, and July 13, 2015, Vulcan Threaded Products Inc. ("Petitioner"),

¹ See *Certain Steel Threaded Rod from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2013-2014*, 80 FR 26222 (May 7, 2015) ("*Preliminary Results*") and accompanying Preliminary Decision Memorandum.

² *Id.*

RMB Fasteners Ltd., and IFI & Morgan Ltd. (collectively "RMB/IFI Group"), Gem-Year Industrial Co., Ltd. ("Gem-Year"), Hubbell Power Systems, Inc. ("HPS"), and Brighton Best International ("BBI") submitted case and rebuttal briefs. On June 12, 2015, the Department extended the deadline for the final results to October 19, 2015³, and again on October 6, 2015, to November 3, 2015.⁴ On September 9, 2015, the Department held a public hearing.

Scope of the Order

The merchandise covered by the order includes steel threaded rod. The subject merchandise is currently classifiable under subheading 7318.15.5051, 7318.15.5056, 7318.15.5090, and 7318.15.2095 of the United States Harmonized Tariff Schedule ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order, which is contained in the accompanying Issues and Decision Memorandum ("I&D Memo"), is dispositive.⁵

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs by parties in this review in the I&D Memo. Attached to this notice, in Appendix I, is a list of the issues which parties raised. The I&D Memo is a public document and is on file in the Central Records Unit ("CRU"), Room B8024 of the main Department of Commerce building, as well as electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at <http://access.trade.gov> and in the

³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James Doyle, Office Director, from Julia Hancock, Senior International Trade Compliance Analyst, "Certain Steel Threaded Rod from the People's Republic of China: Extension of Deadline for Final Results of Administrative Review" (June 12, 2015).

⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James Doyle, Office Director, from Julia Hancock, Senior International Trade Compliance Analyst, "Certain Steel Threaded Rod from the People's Republic of China: Extension of Deadline for Final Results of Administrative Review" (October 6, 2015).

⁵ For a full description of the scope of the order, see Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Results of Fifth Antidumping Duty Administrative Review: Certain Steel Threaded Rod from the People's Republic of China" (November 3, 2015) ("I&D Memo").

CRU. In addition, a complete version of the I&D Memo can be accessed directly on the Internet at <http://enforcement.trade.gov/frn/index.html>. The signed I&D Memo and the electronic versions of the I&D Memo are identical in content.

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties regarding our *Preliminary Results*, we have now calculated a dumping margin based on the sales data and factors of production (“FOP”) data submitted by the RMB/IFI Group. Additionally, the Department has selected Thailand as the primary surrogate country and valued the RMB/IFI Group’s FOP data/movement expenses with data from Thailand. For a list of all issues addressed in these final results, please refer to Appendix I accompanying this notice.

Final Results of Administrative Review

The weighted-average dumping margin for the administrative review is as follows:

Exporter	Weighted-average margin (percent)
IFI & Morgan Ltd. and RMB Fasteners Ltd. (collectively “RMB/IFI Group”)	39.42

In addition, the Department continues to find that the companies identified in Appendix II, attached to this notice, are part of the PRC-wide entity.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the “Act”), and 19 CFR 351.212(b), the Department has determined, and U.S. Customs and Border Protection (“CBP”) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review.

Where the respondent reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).⁶ Where the Department calculated a weighted-

average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, the Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates.⁷ Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis*, the Department will instruct CBP to collect the appropriate duties at the time of liquidation.⁸ Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis*, the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.⁹ We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate.

Pursuant to the Department’s assessment practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide entity rate. Additionally, if the Department determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter’s case number (*i.e.*, at that exporter’s rate) will be liquidated at the PRC-wide entity rate.¹⁰

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 the exporter listed above, the cash deposit rate will be the rate established in the final results of review (except, if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will

⁷ *Id.*

⁸ *Id.*

⁹ See 19 CFR 351.106(c)(2).

¹⁰ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

be the PRC-Wide rate of 206 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. The deposit requirements shall remain in effect until further notice.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (“APO”) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. 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 terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 2, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Issues and Decision Memorandum

- I. Summary
- II. Scope
- III. Background
- IV. Determination of the Methodology for the RMB/IFI Group
- V. Discussion of the Issues
 - Comment 1: Application of Total Adverse Facts Available (“AFA”) to Gem-Year

⁶ See 19 CFR 351.212(b)(1).

Comment 2: Application of the PRC-Wide Rate to Gem-Year and Not Granting a Separate Rate
 Comment 3: Opportunity To Submit Information on Corroborating PRC-Wide Rate
 Comment 4: Application of Total AFA to the RMB/IFI Group
 Comment 5: Application of the PRC-Wide Rate to the RMB/IFI Group and Not Granting a Separate Rate
 Comment 6: Selection of Surrogate Country
 Comment 7: Surrogate Value for Steel Wire Rod and Round Bar
 Comment 8: Surrogate Value for Labor
 Comment 9: Surrogate Financial Ratios
 VI. Conclusion

Appendix II—Companies Subject to the Administrative Review That Are Part of the PRC-Wide Entity

Fastco (Shanghai) Trading Co., Ltd.
 Gem-Year Industrial Co., Ltd.
 Haiyan Dayu Fasteners Co., Ltd.
 Jiaxing Brother Standard Part.
 Midas Union Co., Ltd.
 New Pole Power System Co. Ltd.
 Shanghai P&J International Trading Co., Ltd.
 Zhejiang Morgan Brother Technology Co. Ltd.

[FR Doc. 2015-28751 Filed 11-10-15; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-947; C-570-948]

Certain Steel Grating From the People's Republic of China: Continuation of the Antidumping Duty Order and Countervailing Duty Order

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

SUMMARY: The Department of Commerce (the Department) and the International Trade Commission (the ITC) have determined that revocation of the antidumping duty (AD) order on certain steel grating (steel grating) from the People's Republic of China (PRC) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States. The Department and the ITC have also determined that revocation of the countervailing duty (CVD) order on steel grating from the PRC would likely lead to continuation or recurrence of net countervailable subsidies and material injury to an industry in the United States. Therefore, the Department is publishing a notice of continuation for these AD and CVD orders.

DATES: *Effective Date:* November 12, 2015.

FOR FURTHER INFORMATION CONTACT: Erin Kearney (AD Order), AD/CVD

Operations, Office IV, or Toni Page (CVD Order), AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-0167 or (202) 482-1398, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2015, the Department initiated¹ and the ITC instituted² five-year (sunset) reviews of the AD and CVD orders on steel grating from the PRC,³ pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, the Department determined that revocation of the AD order would likely lead to continuation or recurrence of dumping and that revocation of the CVD order would likely lead to continuation or recurrence of net countervailable subsidies. Therefore, the Department notified the ITC of the magnitude of the margins and the subsidy rates likely to prevail should the orders be revoked, pursuant to sections 751(c)(1) and 752(b) and (c) of the Act.⁴

On November 4, 2015, the ITC published its determination that revocation of the AD and CVD orders on steel grating from the PRC would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to section 751(c) of the Act.⁵

Scope of the Orders

The products covered by these orders are certain steel grating, consisting of two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process, regardless of: (1) Size or shape; (2) method of manufacture; (3) metallurgy (carbon, alloy, or stainless); (4) the

¹ See *Initiation of Five-Year ("Sunset") Review*, 80 FR 31012 (June 1, 2015).

² See *Certain Steel Grating From China: Institution of Five-Year Reviews*, 80 FR 31071 (June 1, 2015).

³ See *Certain Steel Grating from the People's Republic of China: Antidumping Duty Order*, 75 FR 43143 (July 23, 2010); and *Certain Steel Grating from the People's Republic of China: Countervailing Duty Order*, 75 FR 43144 (July 23, 2010).

⁴ See *Certain Steel Grating From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order*, 80 FR 60119 (October 5, 2015), and *Certain Steel Grating From the People's Republic of China: Final Results of Expedited First Sunset Review of the Countervailing Duty Order*, 80 FR 60120 (October 5, 2015).

⁵ See *Certain Steel Grating From the People's Republic of China*, 80 FR 68334 (November 4, 2015).

profile of the bars; and (5) whether or not they are galvanized, painted, coated, clad or plated. Steel grating is also commonly referred to as "bar grating," although the components may consist of steel other than bars, such as hot-rolled sheet, plate, or wire rod.

The scope of the orders excludes expanded metal grating, which is comprised of a single piece or coil of sheet or thin plate steel that has been slit and expanded, and does not involve welding or joining of multiple pieces of steel. The scope of the orders also excludes plank type safety grating which is comprised of a single piece or coil of sheet or thin plate steel, typically in thickness of 10 to 18 gauge, that has been pierced and cold formed, and does not involve welding or joining of multiple pieces of steel.

Certain steel grating that is the subject of the orders is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.90.7000. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Continuation of the Orders

As a result of the determinations by the Department and the ITC that revocation of the AD order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, and revocation of the CVD order would likely lead to continuation or recurrence of countervailable subsidies and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), the Department hereby orders the continuation of the AD and CVD orders on steel grating from the PRC. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the AD and CVD orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), the Department intends to initiate the next five-year review of these orders not later than 30 days prior to the fifth anniversary of the effective date of this continuation notice.

These five-year sunset reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: November 5, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015-28755 Filed 11-10-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-836]

Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2013-2014

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

SUMMARY: On July 8, 2015, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on light-walled rectangular pipe and tube from Mexico.¹ The review covers one producer/exporter of the subject merchandise, Perfiles y Herrajes LM, S.A. de C.V. (Perfiles). The period of review (POR) is August 1, 2013, through July 31, 2014. As a result of our analysis of the comments received, these final results differ from the *Preliminary Results*. For the final weighted-average dumping margins, see the "Final Results of Review" section below.

DATES: *Effective Date:* November 12, 2015.

FOR FURTHER INFORMATION CONTACT: Brian Davis or Emily Maloof, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-7924 or (202) 482-5649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 2015, the Department published the *Preliminary Results*. In accordance with 19 CFR 351.309(c)(1)(ii), we invited parties to comment on the *Preliminary Results*. On August 7, 2015, Perfiles submitted a timely case brief.² We received no additional case or rebuttal briefs from

¹ See *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 39055 (July 8, 2015) (*Preliminary Results*).

² See Letter to the Department, "Light-Walled Rectangular Pipe and Tube from Mexico for the 2013-2014 Review Period—Case Brief of Perfiles y Herrajes LM, S.A. de C.V.," dated August 7, 2015.

any interested party. We did not receive a hearing request.

Scope of the Order

The scope of this order covers certain welded carbon-quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The welded carbon-quality rectangular pipe and tube subject to the order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States at subheadings 8504.23.0040, 8504.23.0080 and 8504.90.9540.³

Analysis of Comments Received

All issues raised in the case brief by Perfiles in this administrative review are addressed in the Issues and Decision Memorandum.⁴ A list of the issues that Perfiles raised and to which we responded is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on-file electronically *via* ACCESS. ACCESS is available to registered users at <http://access.trade.gov> and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at <http://enforcement.trade.gov/frn/index.html>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from Perfiles regarding our *Preliminary Results*, we recalculated Perfiles' weighted-average dumping margin for these final results.

In particular, we revised our comparison program to address certain programming errors, including errors related to discounts and rebates, and to account for certain insurance expenses. We also revised our margin program to

³ For a full description of the scope of the order, see the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, titled "Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from Mexico; 2013-2014" (Issues and Decision Memorandum), which is issued concurrent with and hereby adopted by this notice.

⁴ *Id.*

include certain sales in our analysis that were inadvertently omitted in the *Preliminary Results*.⁵

Final Results of Review

The weighted-average dumping margin for the period August 1, 2013, through July 31, 2014, is as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Perfiles	0.00

Duty Assessment

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in this review, in accordance with 19 CFR 351.212(b). Because we have calculated a zero margin for Perfiles in the final results of this review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

The Department clarified its "automatic assessment" regulation on May 6, 2003.⁶ This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see the *Automatic Assessment Clarification*.

The Department intends to issue assessment instructions directly to CBP 41 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of these final results, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Perfiles noted above will be the rate established in the final results of this administrative

⁵ See Memorandum from Emily Maloof to the File, regarding "Analysis of Data Submitted by Perfiles y Herrajes LM, S.A. de C.V. in the Final Results of the Administrative Review of the Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from Mexico; 2013-2014" (Perfiles Final Analysis Memorandum), dated November 4, 2015 at section "Changes from the Preliminary Results," for further information.

⁶ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Automatic Assessment Clarification*).

review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.76 percent, the all-others rate established in the antidumping investigation.⁷ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

⁷ See *Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value*, 73 FR 45403, 45404 (August 5, 2008).

Dated: November 4, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Final Issues and Decision Memorandum

- I. Summary
- II. Issues
- III. Background
- IV. Scope of the Order
- V. Discussion of Interested Party Comments
- Comment 1: Discounts Granted on Home-Market Sales
- Comment 2: The Proper Universe of Sales
- Comment 3: Certain Home-Market Insurance Expenses
- VI. Recommendation

[FR Doc. 2015–28752 Filed 11–10–15; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2013–2014

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

SUMMARY: On July 15, 2015, the Department of Commerce (“the Department”) published the *Preliminary Results* of the sixth administrative review of the antidumping duty order on steel wire garment hangers from the People's Republic of China (“PRC”).¹ We invited parties to comment on the *Preliminary Results*. Based on our analysis of the comments and information received, we made no changes to the final margin calculations of Shanghai Wells Hanger Co., Ltd. (“Shanghai Wells”).² We continue to

¹ See *Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 2013–2014*, 80 FR 41480 (July 15, 2015) (“*Preliminary Results*”).

² The Department previously found that Shanghai Wells Hanger Co., Ltd., Hong Kong Wells Ltd. (“HK Wells”) and Hong Kong Wells Ltd. (USA) (“Wells USA”) are affiliated and that Shanghai Wells Hanger Co., Ltd. and HK Wells comprise a single entity (collectively, “Shanghai Wells”). Because there were no changes in this review to the facts that supported that decision, we continue to find Shanghai Wells, HK Wells, and USA Wells are affiliated and that Shanghai Wells and HK Wells comprise a single entity. See *Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review*, 75 FR 68758, 68761 (November 9, 2010), unchanged in *First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994, 27996 (May 13, 2011).

find Ningbo Dasheng Hanger Industry Co., Ltd. (“Ningbo Dasheng”) is not eligible for separate rate status and, therefore, is part of the PRC-wide entity. Listed below in the “Final Results of the Administrative Review” section of this notice are the final dumping margins. The period of review (“POR”) is October 1, 2013, through September 30, 2014.

DATES: *Effective Date:* November 12, 2015.

FOR FURTHER INFORMATION CONTACT:

Alexis Polovina, Alexander Komisar, or Kathleen Marksberry, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3927, (202) 482–7425, or (202) 482–7906, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Results* on July 15, 2015. On August 24, 2015, M&B Metal Products Inc., (“Petitioner”), U.S. Distributors,³ Aristocraft of America LLC (“Aristocraft”), and Ningbo Dasheng submitted case briefs. On September 1, 2015, Petitioner submitted a rebuttal brief. On September 9, 2015, the Department held a public hearing where counsel for Petitioner, U.S. Distributors, and Aristocraft, presented issues raised in their case and rebuttal briefs.

Scope of the Order

The merchandise that is subject to the order is steel wire garment hangers. The products subject to the order are currently classified under U.S. Harmonized Tariff Schedule (“HTSUS”) subheadings 7326.20.0020, 7323.99.9060, and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise remains dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum,⁴ which is hereby adopted by this notice.

³ FabriClean Supply Inc., Best For Less Dry Cleaners Supply LLC, Ideal Chemical & Supply Company, Laundry & Cleaners Supply Inc., Rocky Mountain Hanger MFG Co., Rosenberg Supply Co., Ltd, and ZTN Management Company, LLC, (collectively, “U.S. Distributors”). The U.S. Distributors include importers of subject merchandise and a wholesaler of domestic like product.

⁴ See the Department's Memorandum, titled “Steel Wire Garment Hangers from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Sixth Antidumping Duty Administrative Review,” dated concurrently with this notice (“Issues and Decision Memorandum”).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by interested parties in this review are addressed in the Issues and Decision Memorandum.⁵ A list of the issues which parties raised is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at <http://access.trade.gov> and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://www.trade.gov/enforcement/>. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

PRC-Wide Entity

Shaoxing Dingli and the Shaoxing Entity⁶ failed to respond to the Department's requests for information.⁷ These companies, therefore, are not eligible for separate rate status.⁸ Additionally, Ningbo Dasheng failed to adequately respond to all parts of the questionnaire, and therefore, is also not eligible for a separate rate.⁹ Accordingly, the Department finds that the PRC-wide entity includes these companies.

Final Results of the Administrative Review

Regarding the administrative review, the following weighted-average dumping margins exist for the period October 1, 2013, through September 30, 2014:

Exporter	Weighted-average margin (percent)
Shanghai Wells Hanger Co., Ltd. ¹⁰	33.24

⁵ *Id.*

⁶ We selected two companies for individual examination, however, these two companies failed to respond. These companies are: 1) Shaoxing Dingli Metal Clotheshorse Co., Ltd., ("Shaoxing Dingli"); and 2) Shaoxing Gangyuan Metal Manufacture (collectively, "the Shaoxing Entity").

⁷ See *Preliminary Results*, at "Respondent Selection" section.

⁸ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 70850, 70851 (November 28, 2014).

⁹ See Issues and Decision Memorandum, at Comment 1.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Where the respondent reported reliable entered values, we calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).¹¹ Where the Department calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, the Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates.¹² Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis*, the Department will instruct CBP to collect the appropriate duties at the time of liquidation.¹³ Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis*, the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.¹⁴

The Department announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. Additionally, if the Department determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.*,

¹⁰ This rate applies to the single entity comprised of Shanghai Wells Hanger Co., Ltd., and Hong Kong Wells Ltd.

¹¹ See 19 CFR 351.212(b)(1).

¹² *Id.*

¹³ *Id.*

¹⁴ See 19 CFR 351.106(c)(2).

at that exporter's rate) will be liquidated at the PRC-wide rate.¹⁵

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the companies listed above, the cash deposit rate will be established in the final results of these reviews (except, if the rate is zero or *de minimis*, then zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 187.25 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. We request a timely written notification of the return or destruction

¹⁵ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

of APO materials, or conversion to judicial protective order. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 5, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—Issues and Decision Memorandum

List of Topics Discussed in the Final Decision Memorandum

Summary

Background

Scope of the Order

Discussion of the Issues

Comment 1: PRC-wide Treatment for Ningbo Dasheng

Comment 2: Selection of Financial Statements

Comment 3: Whether to Adjust U.S Prices for Un-refunded Value-Added Tax (“VAT”)

Comment 4: Whether the Thai AUV for Corrugated Paper Is Aberrational

Comment 5: Whether the Department Should Revise the Surrogate Value for Brokerage and Handling (“B&H”)

Recommendation

[FR Doc. 2015–28757 Filed 11–10–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–838]

Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2013–2014

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

SUMMARY: On August 10, 2015, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on seamless refined copper pipe and tube from Mexico.¹ The review covers one producer/exporter of the subject merchandise, GD Affiliates S. de R.L. de C.V. (Golden Dragon).² The period of

¹ See *Seamless Refined Copper Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 47908 (August 10, 2015) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² The Department previously treated GD Affiliates S. de R.L. de C.V. as part of a single entity including: (1) GD Copper Cooperatief U.A.; (2) Hong Kong GD Trading Co. Ltd.; (3) Golden Dragon

review (POR) is November 1, 2013, through October 31, 2014.

No interested party submitted comments on the preliminary results. We made no changes to the margin calculation for the final results of this review. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margin for Golden Dragon is listed below in the “Final Results of Review” section of this notice.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Eastwood or Dennis McClure, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–5973, respectively.

SUPPLEMENTARY INFORMATION:

Background

The review covers one producer/exporter of the subject merchandise, Golden Dragon. On August 10, 2015, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on seamless refined copper pipe and tube from Mexico.

We invited parties to comment on the preliminary results of the review. No interested party submitted comments. The Department conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order³ is seamless refined copper pipe and tube. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in the

Holding (Hong Kong) International, Ltd.; (4) GD Copper U.S.A. Inc.; (5) GD Affiliates Servicios S. de R.L. de C.V.; and (6) GD Affiliates S. de R.L. de C.V., which is collectively referred to as Golden Dragon. See, e.g., *Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty New Shipper Review*, 77 FR 59178 (September 26, 2012), and accompanying Issues and Decision Memorandum.

³ See *Seamless Refined Copper Pipe and Tube From Mexico and the People’s Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value From Mexico*, 75 FR 71070 (November 22, 2010) (*Amended Final and Order*).

Preliminary Decision Memorandum,⁴ remains dispositive.

Final Results of the Review

We determine that a weighted-average dumping margin of 0.00 percent exists for entries of subject merchandise that were produced and/or exported by GD Affiliates S. de R.L. de C.V. and that entered, or were withdrawn from warehouse, for consumption during the POR.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. Pursuant to the *Final Modification for Reviews*,⁵ because the weighted-average dumping margins for Golden Dragon is zero, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.⁶

For entries of subject merchandise during the POR produced by Golden Dragon for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.⁷

The Department intends to issue assessment instructions to CBP 41 days after the date of publication of these final results of review, pursuant to 19 CFR 356.8(a).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of these final results for all shipments of seamless refined copper pipe and tube from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Golden Dragon will be 0.00 percent, the weighted average dumping margin established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a completed prior segment of the proceeding, the cash deposit rate will continue to be the

⁴ See *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 3–4.

⁵ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

⁶ *Id.* at 8102.

⁷ For a full discussion, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 26.03 percent, the all-others rate established in the *Amended Final and Order*. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

In accordance with 19 CFR 351.305(a)(3), this notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO, which continues to govern business proprietary information in this segment of the proceeding. 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 terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(h).

Dated: November 4, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015-28754 Filed 11-10-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

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

DATES: *Effective Date:* November 12, 2015.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230, telephone: (202) 482-3692.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject

to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish quarterly updates to the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the periods April 1, 2015, through June 30, 2015.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies, as defined in section 702(h) of the Act, being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: November 4, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

Subsidy Programs on Cheese Subject to an In-Quota Rate of Duty

Country	Program(s)	Gross ¹ subsidy (\$/lb)	Net ² subsidy (\$/lb)
28 European Union Member States ³	European Union Restitution Payments	0.00	0.00
Canada	Export Assistance on Certain Types of Cheese	0.43	0.43
Norway	Indirect (Milk) Subsidy	0.00	0.00
	Consumer Subsidy	0.00	0.00
	Total	0.00	0.00
Switzerland	Deficiency Payments	0.00	0.00

[FR Doc. 2015-28758 Filed 11-10-15; 8:45 am]

BILLING CODE 3510-DS-P

¹ Defined in 19 U.S.C. 1677(5).

² Defined in 19 U.S.C. 1677(6).

³ The 28 member states of the European Union are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia,

Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

DEPARTMENT OF COMMERCE**International Trade Administration****Advisory Committee on Supply Chain Competitiveness Solicitation of Nominations for Membership**

AGENCY: International Trade Administration, U.S. Department of Commerce

ACTION: Notice of an opportunity to apply for membership on the Advisory Committee on Supply Chain Competitiveness.

SUMMARY: The Department of Commerce, International Trade Administration (ITA), is requesting nominations to fill vacancies on the Advisory Committee on Supply Chain Competitiveness (Committee). The Committee was established under the Federal Advisory Committee Act, 5 U.S.C. App. The Committee was first chartered on November 21, 2011, and renewed on November 20, 2013. The Committee has functioned effectively, and the Department has an on-going need for consensus advice regarding supply chain competitiveness. The Department anticipates renewing the Committee for another two-year term. The Committee advises the Secretary on the necessary elements of a comprehensive policy approach to supply chain competitiveness designed to support U.S. export growth and national economic competitiveness, encourage innovation, facilitate the movement of goods, and improve the competitiveness of U.S. supply chains for goods and services in the domestic and global economy; and provides advice to the Secretary on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. The Department is seeking nominations to fill vacancies on the Committee for the upcoming Charter term anticipated to start in November 2015.

DATES: Applications for immediate consideration for appointment must be received on or before 5:00 p.m. EDT on December 18, 2015. After that date, ITA will continue to accept applications under this notice for a period of up to two years from the deadline to fill any vacancies that may arise.

ADDRESSES: Richard Boll, Office of Supply Chain, Professional & Business Services, Room 11014, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; phone 202-482-1135; email: richard.boll@trade.gov.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Supply Chain,

Professional & Business Services, Room 11014, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; phone 202-482-1135; email: richard.boll@trade.gov. Please visit the Advisory Committee on Supply Chain Competitiveness Web site at: <http://trade.gov/td/services/oscpb/supplychain/acsc/>.

SUPPLEMENTARY INFORMATION: The Committee has a maximum of 45 members. The Department of Commerce is seeking nominations for immediate consideration to fill up to 10 positions on the Committee for the upcoming 2015–2017 charter term, and will continue to accept nominations under this notice on an on-going basis for two-years for consideration to fill vacancies that may arise during the charter term. Member appointment terms run for two-years concurrently with the Committee charter. Members will be selected in accordance with applicable Department of Commerce Guidelines based upon their ability to advise the Secretary of Commerce on the necessary elements of a comprehensive policy approach to supply chain competitiveness designed to support U.S. export growth and national economic competitiveness, encourage innovation, facilitate the movement of goods, and improve the competitiveness of U.S. supply chains for goods and services in the domestic and global economy; and to provide advice to the Secretary on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. The Committee provides detailed policy and technical advice, information, and recommendations to the Secretary regarding:

- (1) National, state, or local factors in trade programs and policies that affect the efficient domestic and international operation and competitiveness of U.S. global supply chains from point of origin to destination;
- (2) elements of national policies affecting the movement of goods, infrastructure, investment, and regulatory factors that affect supply chain competitiveness and sustainability; and
- (3) information and data systems to generate metrics that can be used to quantify and improve supply chain performance.

Members shall be selected in a manner that ensures that the Committee remains balanced in terms of product and service lines and reflects the diversity of the supply chain sector, including in terms of geographic location and company size.

Members of the Committee shall represent companies, organizations, and

stakeholders involved in the U.S. supply chain, with at least one individual representing each of the following: supply chain firms or their associations; users of supply chains (e.g., retailers, distributors, manufacturers or other sectors); freight transportation providers; ports; and academia. Based on the balance of viewpoints currently represented on the Committee, Representatives from the retail, airport, energy, logistics and freight forwarding, and big data analysis sectors are encouraged to apply for the immediate vacancies.

Other than the experts from academia, all members shall serve in a representative capacity, expressing the views and interests of a U.S. company or U.S. organization, as well as its particular sector. Members serving in such a representative capacity are not Special Government Employees. The members from academia serve as experts and therefore are Special Government Employees (SGEs) and shall be subject to the ethical standards applicable to SGEs. Members who serve as SGEs must certify that they are not Federally-registered lobbyists.

Each member of the Committee must be a U.S. citizen and not registered as a foreign agent under the Foreign Agents Registration Act. All appointments are made without regard to political affiliation. Self-nominations will be accepted.

Members of the Committee will not be compensated for their services or reimbursed for their travel expenses. The Committee shall meet approximately quarterly, or as determined by the DFO.

Members shall serve at the pleasure of the Secretary.

All nominations for membership on the Committee should provide the following information:

(1) Name, title, and relevant contact information (including phone, fax, and email address) of the individual requesting consideration; and

(2) An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938.

In addition to the above requirements for all nominations, nominations for representatives of companies, organizations, and stakeholders involved in the U.S. supply chain, including supply chain firms or their associations; users of supply chains (e.g., retailers, distributors, manufacturers, or other sectors); freight transportation providers; and ports, should also provide the following information:

(1) A sponsor letter on the letterhead of the sponsoring U.S. company or U.S. organization to be represented, containing a brief description why the nominee should be considered for membership;

(2) Short biography of nominee including credentials;

(3) Brief description of the U.S. company or U.S. organization to be represented and its activities and size (number of employees or members and annual sales, if applicable); and

(4) An affirmative statement that the applicant meets all Committee eligibility requirements for representative members, including that the applicant represents a U.S. company or U.S. organization.

a. For purposes of Committee eligibility, a U.S. company is at least 51 percent owned by U.S. persons.

b. For purposes of Committee eligibility, a U.S. organization is controlled by U.S. persons, as determined based on its board of directors (or comparable governing body), membership, and funding sources, as applicable.

In addition to the above requirements for all nominations, nominations for experts from academia should also provide the following information:

(1) A description of the nominee's area(s) of expertise;

(2) A concise Curriculum Vitae (CV) or resume that covers education, experience, and relevant publications and summarizes how this expertise addresses supply chain competitiveness;

(3) An affirmative statement that the applicant meets all Committee eligibility requirements.

Please do not send company or organization brochures.

Nominations may be emailed to richard.boll@trade.gov, faxed to the attention of Richard Boll at 202-482-2669, or mailed to Richard Boll, Office of Supply Chain, Professional & Business Services, Room 11014, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and must be received on or before December 18, 2015. Nominees selected for appointment to the Committee will be notified.

Dated: November 5, 2015.

David Long,

Director, Office of Supply Chain and Professional & Business Services, November 5, 2015.

[FR Doc. 2015-28743 Filed 11-10-15; 8:45 am]

BILLING CODE 3510-DR-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection Number 3038-0080, Annual Report for Chief Compliance Officer of Registrants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act ("PRA"), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the collections of information mandated by Commission regulation 3.3 (Chief Compliance Officer).

DATES: Comments must be submitted on or before January 11, 2016.

ADDRESSES: You may submit comments, identified by "Annual Report for Chief Compliance Officer of Registrants," and Collection Number 3038-0080 by any of the following methods:

- *The Agency's Web site, at <http://comments.cftc.gov/>.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal:* <http://www.regulations.gov/>. Follow the instructions for submitting comments through the Portal. Please submit your comments using only one method.

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:

Jacob Chachkin, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418-5496, email: jchachkin@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA,¹ 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 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing 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: Annual Report for Chief Compliance Officer of Registrants (OMB Control No. 3038-0080). This is a request for an extension of a currently approved information collection.

Abstract: On April 3, 2012, the Commission adopted Commission regulation 3.3 (Chief Compliance Officer)² under sections 4d(d) and 4s(k)³ of the Commodity Exchange Act ("CEA"). Commission regulation 3.3 requires each futures commission merchant ("FCM"),⁴ swap dealer ("SD"),⁵ and major swap participant ("MSP")⁶ to designate, by filing a form 8-R, a chief compliance officer who is responsible for developing and administering policies and procedures that fulfill certain duties of the SD, MSP, or FCM and that are reasonably designed to ensure the registrant's compliance with the CEA and Commission regulations; establishing procedures for the remediation of noncompliance issues identified by the chief compliance officer; establishing procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues; preparing, signing, certifying and filing with the Commission an annual compliance report that contains the information specified in the regulations; amending the annual report if material

¹ 44 U.S.C. 3501 *et seq.*

² 17 CFR 3.3.

³ 7 U.S.C. 6d(d) and 6s(k).

⁴ For the definition of FCM, *see* section 1a(28) of the CEA and Commission regulation 1.3(p). 7 U.S.C. 1a(28) and 17 CFR 1.3(p).

⁵ For the definition of SD, *see* section 1a(49) of the CEA and Commission regulation 1.3(ggg). 7 U.S.C. 1a(49) and 17 CFR 1.3(ggg).

⁶ For the definitions of MSP, *see* section 1a(33) of the CEA and Commission regulation 1.3(hhh). 7 U.S.C. 1a(33) and 17 CFR 1.3(hhh).

errors or omissions are identified; and maintaining records of the registrant's compliance policies and procedures and records related to the annual report. The information collection obligations imposed by Commission regulation 3.3 are essential to ensuring that FCMs, SDs, and MSPs maintain comprehensive policies and procedures that promote compliance with the CEA and Commission regulations. In particular, the Commission believes that, among other things, these obligations (i) promote compliance behavior through periodic self-evaluation, (ii) inform the Commission of possible compliance weaknesses, (iii) assist the Commission in determining whether the registrant remains in compliance with the CEA and Commission regulations, and (iv) help the Commission to assess whether the registrant has mechanisms in place to adequately address compliance problems that could lead to a failure of the registrant. With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.⁷

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on

the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: In light of the contraction in the number of Commission-registered FCMs since the Commission promulgated regulation 3.3, the Commission is revising its estimate of the burden for this collection. Accordingly, the respondent burden for this collection is estimated to be as follows:

Number of Registrants: 200.

Estimated Average Burden Hours per Registrant: 1006.

Estimated Aggregate Burden Hours: 201,200.

Frequency of Recordkeeping: Annually or on occasion.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: November 6, 2015.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2015-28732 Filed 11-10-15; 8:45 am]

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038-0089, Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission ("CFTC") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act ("PRA"), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. This notice solicits comments for certain swap data recordkeeping and reporting requirements imposed on the following entities: Swap Dealers ("SDs"), Major Swap Participants ("MSPs"), and swap counterparties that are neither swap dealers nor major swap participants ("non-SD/MSP counterparties").

DATES: Comments must be submitted on or before January 11, 2016.

ADDRESSES: You may submit comments, identified by "Renewal of Collection

Pertaining to Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps," or Renewal 3038-0089, by any of the following methods:

- *The Agency's Web site, at: <http://comments.cftc.gov/>.* Follow the instructions for submitting comments through the Web site.

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

- *Hand Delivery/Courier:* Same as Mail above.

- *Federal eRulemaking Portal: <http://www.regulations.gov/>.* Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT:

Thomas Guerin, Division of Market Oversight, Commodity Futures Trading Commission, 1155 21st Street NW., (202) 734-4194, email: tguerin@cftc.gov, and refer to OMB Control No. 3038-0089.

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 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, the CFTC is publishing notice of the proposed collection of information listed below.

Title: Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps (OMB Control No. 3038-0089). This is a request for extension of a currently approved information collection.

Abstract: The collection of information is needed to ensure that the CFTC and other regulators have access to data regarding pre-enactment and transition swaps, as required by the Commodity Exchange Act as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The Dodd-Frank Act directed the CFTC to adopt rules providing for the reporting of data

⁷ 17 CFR 145.9.

relating to swaps entered into before the date of enactment of the Dodd-Frank Act, the terms of which had not expired as of the date of enactment of the Dodd-Frank Act (“pre-enactment swaps”) and data relating to swaps entered into on or after the date of enactment of the Dodd-Frank Act and prior to the compliance date specified in the the CFTC’s final swap data reporting rules (“transition swaps”). On May 17, 2012, the CFTC adopted regulation 46, which imposes recordkeeping and reporting requirements relating to pre-enactment and historical swaps.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the CFTC, including whether the information will have a practical use;
- The accuracy of the CFTC’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

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>. You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the CFTC’s regulations.¹ The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other

applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: Provisions of CFTC Regulations 46.2, 46.3, 46.4, 46.8, 46.10, and 46.11 result in information collection requirements within the meaning of the PRA. These regulations required SDs, MSPs and non-SD/MSP counterparties to incur one-time costs to establish systems and processes associated with swaps data recordkeeping and reporting. The CFTC estimates that SDs, MSPs, and non-SD/MSP counterparties incurred a one-time burden of 91,250 hours associated with part 46 recordkeeping and reporting requirements. With respect to the ongoing reporting and recordkeeping burdens associated with pre-enactment and transition swaps, the CFTC believes that SDs, MSPs, and non-SD/MSP counterparties incur an annual time-burden of 18,903 hours. This time-burden represents a proportion of the burden respondents incur to operate and maintain their swap data recordkeeping and reporting systems.

17 CFR 45 imposes swap recordkeeping and reporting requirements on respondents related to swaps that are not pre-enactment or transition swaps. The CFTC believes that respondents use the same recordkeeping and reporting systems to comply with both parts 45 and 46. The CFTC has computed the estimated burden for 17 CFR 46 by estimating the burden incurred by respondents to operate and maintain their swap data recordkeeping and reporting systems and then estimating the percentage of that burden associated with pre-enactment and transition swaps. Since the enactment of 17 CFR 45, the vast majority of pre-enactment and transition swaps have been terminated by the parties to the swaps or are otherwise no longer in existence. As 17 CFR 46 only requires respondents to make ongoing reports regarding pre-enactment and transition swaps that continue to be in existence, the number of reports being made pursuant to 17 CFR 46 has declined significantly over time. As the volume of reports made pursuant to 17 CFR 46 is estimated to be very small relative to the estimated volume of reports made pursuant to 17 CFR 45, the CFTC’s burden estimate has allocated the vast majority of the estimated burden to operate and maintain respondents’ swap data recordkeeping and reporting systems to the burden estimate associated with 17 CFR 45.

Respondents/Affected Entities: Swap Dealers, Major Swap Participants, and other counterparties to a swap transaction (*i.e.*, end-user, non-SD/non-MSP counterparties).

Estimated number of respondents: 30,125.

Estimated total annual burden on respondents: 18,903 hours.

Frequency of collection: Ongoing.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: November 6, 2015.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2015–28729 Filed 11–10–15; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2015–OS–0124]

U.S. Court of Appeals for the Armed Forces Proposed Rules Changes

ACTION: Notice of Proposed Changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes to Rules 5, 21(b)(5)(F), and 26 of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces.

DATES: Comments on the proposed changes must be received by December 14, 2015.

ADDRESSES: You may submit comments, identified by docket number and title by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Mail:** Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number 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 personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of the Court, telephone (202) 761–1448.

¹ 17 CFR 145.9.

Dated: November 5, 2015.

Aaron Siegel,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

Rules 5 and 21(b)(5)(F):

Rule 5—Scope of Review—currently reads:

The Court acts only with respect to the findings and sentence as approved by reviewing authorities, and as affirmed or set aside as incorrect in law by a Court of Criminal Appeals, except insofar as it may take action on a certificate for review or a petition for review of a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 U.S.C. 862, or to grant extraordinary relief in aid of its jurisdiction, including the exercise of its supervisory powers over the administration of the UCMJ. The Court may specify or act on any issue concerning a matter of law which materially affects the rights of the parties.

The proposed change to Rule 5 would read:

The Court acts only with respect to the findings and sentence as approved by reviewing authorities, and as affirmed or set aside as incorrect in law by a Court of Criminal Appeals, except insofar as it may take action on a certificate for review or a petition for review of a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 U.S.C. 862, or to grant extraordinary relief in aid of its jurisdiction. The Court may specify or act on any issue concerning a matter of law which materially affects the rights of the parties.

Rule 21(b)(5)(F)—Supplement to Petition for Grant of Review—currently reads:

(b) The supplement to the petition shall be filed in accordance with the applicable time limit set forth in Rule 19(a)(5)(A) or (B), shall include an Appendix containing a copy of the decision of the Court of Criminal Appeals, unpublished opinions cited in the brief, relevant extracts of rules and regulations, and shall conform to the provisions of Rules 24(b), 35A, and 37. Unless authorized by Order of the Court or by motion of a party granted by the Court, the supplement and any answer thereto shall not exceed 25 pages, except that a supplement or answer containing no more than 9,000 words or 900 lines of text is also acceptable. Any reply to the answer shall not exceed 10 pages, except that a reply containing 4,000 words or 400 lines of text is also

acceptable. The supplement shall contain:

. . . (5) A direct and concise argument showing why there is good cause to grant the petition, demonstrating with particularity why the errors assigned are materially prejudicial to the substantial rights of the appellant. Where applicable, the supplement to the petition shall also indicate whether the court below has: . . . (F) so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a court-martial or other person acting under authority of the UCMJ, as to call for an exercise of this Court's power of supervision; or . . .

The proposed change to Rule 21(b)(5)(F) would read:

. . . (F) so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a court-martial or other person acting under authority of the UCMJ, as to warrant review by the Court; or . . .

Comment: Documents have recently been filed with the Court citing to the supervisory power noted in the Court's Rules 5 and 21(b)(5)(F). This is somewhat problematic because the references to supervisory power in these rules predate the Supreme Court's decision in *Clinton v. Goldsmith*, 526 U.S. 529 (1999), which rejected an expansive view of the Court's supervisory power over all aspects of military justice. Specifically the Court stated: "[T]he CAAF is not given authority, by the All Writs Act or otherwise, to oversee all matters arguably related to military justice or to act as a plenary administrator of final judgments it has affirmed." 526 U.S. 529, 536. Given *Goldsmith*, the broad references to supervisory power in the rules should be deleted. That is not to say that supervisory authority does not exist, only that it is not as expansive as it was pre-*Goldsmith*, and its contours will need to be resolved in future cases. However, the Court's Rules of Practice and Procedure should not be cited as a source for this authority in the absence of settled case law.

Rule 26:

Rule 26—Amicus Curiae Briefs—currently reads:

(a) A brief of an amicus curiae may be filed (1) by an appellate government or defense division of an armed service other than that in which the case has arisen, (2) by invitation of the Court, or (3) by motion for leave to file granted by the Court.

(b) Unless otherwise ordered by the Court, a brief of an amicus curiae in

support of a party may be filed no later than 10 days after that party has filed its brief. If neither party is supported, the brief of an amicus curiae shall be filed no later than 10 days after the first brief is filed.

(c) Neither the hearing nor the disposition of a case will be delayed pending action on a motion for leave to file an amicus curiae brief or a motion of an amicus curiae to participate in a hearing, or to await the filing of a brief of an amicus curiae under this rule.

(d) Except by the Court's permission, a brief of an amicus curiae may be no more than one-half the maximum length authorized by Rule 24 for a brief for an appellant/petitioner. If the Court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(e) A member of the Bar of the Court who represents an amicus curiae and is authorized to file a brief under paragraph (a) of this rule may file a motion for leave to have a law student enter an appearance on behalf of the amicus curiae. To be eligible to participate under this rule, a law student must be acting under the attorney's supervision and the attorney and the law student must substantially comply with the requirements of Rule 13A(b)(1)–(5) and (c)(1)–(11). Argument by a law student granted permission to appear on behalf of an amicus curiae may be requested by motion filed under Rule 30.

The proposed change to Rule 26 would read:

(a) A brief of an amicus curiae may be filed (1) by an appellate government or defense division of an armed service other than that in which the case has arisen, (2) by invitation of the Court, or (3) by motion for leave to file granted by the Court.

(b) All motions and briefs filed under Rule 26(a)(3) must contain a statement of the movant's interest and why the matters asserted are relevant to the disposition of the case. Amicus curiae briefs filed pursuant to Rule 26(a)(3) that bring relevant matter to the attention of the Court not already brought to its attention by the parties may be of considerable help to the Court. An amicus curiae brief that does not serve this purpose burdens the Court, and its filing is not favored. The motion must also provide a statement as to whether the parties consent to the filing of the amicus curiae brief. Only an attorney admitted to practice as a member of the Bar of the Court or an attorney appearing pro hac vice may file an amicus curiae brief.

(c) An amicus curiae brief submitted before the Court's consideration of a petition for grant of review, petition for extraordinary relief, writ-appeal petition, or petition for new trial may be filed under subparagraphs (a)(1) or (a)(2), or if the Court grants leave to file under subparagraph (a)(3) of this rule.

(d) Unless otherwise ordered by the Court, a brief of an amicus curiae in support of a party shall be filed no later than 10 days after that party has filed its brief, supplement to the petition for grant of review, petition for extraordinary relief, writ-appeal petition, or answer. If neither party is supported, the brief of an amicus curiae shall be filed no later than 10 days after the first brief, supplement to the petition for grant of review, petition for extraordinary relief, or writ-appeal petition is filed. In the case of a petition for new trial, the brief of an amicus curiae shall be filed no later than 10 days after the petitioner's brief in support of the petition has been filed with the Court. Motions for leave to file an amicus curiae brief under Rule 26(a)(3) must be filed within the time allowed for the filing of the brief and contemporaneously with the amicus curiae brief itself. Requests for extensions of time to file an amicus curiae brief will not be granted. A party may file a motion under Rule 30 for leave to reply to the brief of an amicus curiae.

(e) Neither the hearing nor the disposition of a case will be delayed pending action on a motion for leave to file an amicus curiae brief or a motion of an amicus curiae to participate in a hearing, or to await the filing of a brief of an amicus curiae under this rule.

(f) Except by the Court's permission, a brief of an amicus curiae may be no more than one-half the maximum length authorized by Rule 24 for a brief for an appellant/petitioner. If the Court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(g) A member of the Bar of the Court who represents an amicus curiae and is authorized to file a brief under paragraph (a) of this rule may file a motion for leave to have a law student enter an appearance on behalf of the amicus curiae. To be eligible to participate under this rule, a law student must be acting under the attorney's supervision and the attorney and the law student must substantially comply with the requirements of Rule 13A(b)(1)–(5) and (c)(1)–(11). Argument by a law student granted permission to appear on behalf of an amicus curiae may be requested by motion filed under Rule 30.

Comment: The first part of new paragraph (b) tracks similar language in Supreme Court Rule 37. It advises that “me too” briefs are not favored, and this is generally the view of all appellate courts. The proposal goes on to require that motions for leave to file, as well as the amicus briefs themselves, contain a statement of the movant's interest and explain why the matters asserted in the brief are relevant to the disposition of the case. The proposal operates differently from the practice in the Article III courts of appeal in that even with the consent of the parties, an amicus filer must still ask for leave of the Court to file an amicus curiae brief. In this way, the Court retains the authority to decide all requests to file amicus briefs based on its own determination that the brief will be helpful. It is believed that party consent may not be an adequate filter that ensures that amicus briefs are helpful to the Court. While party consent is not a guarantee that the brief will be accepted, lack of consent is not a guarantee that it will be rejected. Rather, the Court oversees all filings to be sure that amicus participation is warranted. Paragraph (b) also includes a requirement that only members of the Court's Bar or attorneys appearing pro hac vice may file motions for leave to file amicus curiae briefs.

Paragraph (c) proposes a new rule to clarify that motions to file amicus curiae briefs can be filed in support of petitions for grant of review, petitions for extraordinary relief, writ-appeal petitions, petitions for new trial, and answers to such pleadings.

[FR Doc. 2015–28598 Filed 11–10–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement/Overseas Environmental Impact Statement for Navy Atlantic Fleet Training and Testing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 Code of Federal Regulations [CFR] Parts 1500–1508), and Executive Order (EO) 12114, the Department of the Navy (Navy) announces its intent to prepare an Environmental Impact Statement (EIS)/

Overseas EIS (OEIS) to evaluate the potential environmental effects associated with continuing to conduct military readiness activities, which consist of training activities and research, development, testing, and evaluation (hereinafter referred to as “testing”) activities in the Atlantic Fleet Training and Testing (AFTT) Study Area. The Study Area consists of sea space in and airspace over the Atlantic Ocean along the eastern coast of North America, portions of the Caribbean Sea, and the Gulf of Mexico. The AFTT Study Area begins seaward from the mean high water line and moves east to the 45 degree longitude line. The Study Area covers approximately 2.6 million square nautical miles of ocean area, including designated Navy operating areas, warning areas, select Navy pier-side locations, and associated port transit channels.

In order to both achieve and maintain military readiness, the Navy proposes to:

- Conduct training and testing activities at levels required to support Navy military readiness requirements beginning in 2018 into the reasonably foreseeable future; and
- Accommodate evolving mission requirements associated with force structure changes, including those resulting from the development, testing, and ultimate introduction of new platforms (vessels, aircraft, and weapon systems) into the fleet; thereby ensuring critical Navy requirements are met.

As part of this process the Navy will seek to obtain authorization and permitting, as required under the Marine Mammal Protection Act and Endangered Species Act, respectively.

The Navy invites comments on the scope and content of the EIS/OEIS from all interested parties. Comments may be provided by mail and through the EIS/OEIS Web site at: <http://www.AFTTEIS.com>. Mailed comments must be postmarked no later than January 16, 2016 and mailed to the address below to ensure they are considered.

FOR FURTHER INFORMATION CONTACT:

Lesley Dobbins-Noble, Naval Facilities Engineering Command, Code EV22LDN (AFTT EIS/OEIS Project Manager), 6506 Hampton Boulevard, Norfolk, Virginia 23508–1278. 703–322–4625.

SUPPLEMENTARY INFORMATION: The Navy's lead action proponent is Commander, U.S. Fleet Forces Command. Additional action proponents include Naval Sea Systems Command (NAVSEA), Naval Air Systems Command (NAVAIR), and the Office of Naval Research (ONR). The

Proposed Action is to conduct military readiness activities in the AFTT Study Area. These training and testing activities are generally consistent with those analyzed in the AFTT EIS/OEIS completed in August 2013 and are representative of training and testing that the Navy has been conducting in the AFTT Study Area for decades.

The following range complexes fall within the AFTT Study Area: Northeast Range Complexes, Virginia Capes Range Complex, Navy Cherry Point Range Complex, Jacksonville Range Complex, Key West Range Complex, and Gulf of Mexico Range Complex. The testing ranges in the AFTT Study Area include: Naval Undersea Warfare Center Division Newport, Newport, Rhode Island; Naval Surface Warfare Center (NSWC) Panama City Division, Panama City, Florida; and NSWC Carderock Division South Florida Ocean Measurement Facility, Dania, Florida. While most Navy military readiness activities take place in operating and warning areas in the AFTT Study Area, some activities, such as sonar maintenance and gunnery exercises, are conducted concurrent with normal transits and occur outside of these areas, but still within the Study Area. The pierside testing locations and associated port transit channels are located at the following Navy ports and naval shipyards: Portsmouth Naval Shipyard, Kittery, Maine; Naval Submarine Base New London, Groton, Connecticut; Naval Station Norfolk, Norfolk, Virginia; Joint Expeditionary Base Little Creek-Fort Story, Virginia Beach, Virginia; Naval Submarine Base Kings Bay, Kings Bay, Georgia; Naval Station Mayport, Jacksonville, Florida; Norfolk Naval Shipyard, Portsmouth, Virginia; and Port Canaveral, Cape Canaveral, Florida. Additional AFTT Study Area pierside testing locations and associated port transit channels are located in Bath, Maine; Groton, Connecticut; Newport News, Virginia; and Pascagoula, Mississippi.

Pursuant to 40 CFR 1501.6, the Navy will invite the National Marine Fisheries Service to be a cooperating agency in preparation of the EIS/OEIS.

The purpose of the Proposed Action is to maintain a ready force, which is needed to ensure that the Navy can meet its mission to maintain, train, and equip combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas, as consistent with Congressional direction Section 5062, of Title 10 U.S. Code.

The AFTT Phase III EIS/OEIS will consider a No Action Alternative and action alternatives that account for types and tempo of training and testing

activities beginning in 2018 as necessary to meet future readiness requirements.

Resource areas that will be addressed include, but are not limited to: Biological resources (including marine mammals and threatened and endangered species), sediments and water quality, air quality, noise, cultural resources, socioeconomic resources, and public health and safety.

The scoping process will be used to identify community concerns and local issues to be addressed in the EIS/OEIS. Federal agencies, state agencies, local agencies, Native American Indian Tribes and Nations, the public, and interested persons are encouraged to identify specific issues or topics of environmental concern that the Navy should consider. Written comments must be postmarked no later than January 12, 2016 to ensure they are considered in the development of the EIS/OEIS and mailed to: Naval Facilities Engineering Command, Atlantic, Code: EV22LDN (AFTT EIS/OEIS Project Manager), 6506 Hampton Boulevard, Norfolk, Virginia, 23508-1278. Comments also can be submitted electronically by January 12, 2016 via the project Web site at <http://www.AFTTEIS.com>.

Dated: November 5, 2015.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Administrative Law Division, Federal Register Liaison Officer.

[FR Doc. 2015-28750 Filed 11-10-15; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement/ Overseas Environmental Impact Statement for Hawaii-Southern California Training and Testing and Notice of Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 Code of Federal Regulations [CFR] parts 1500-1508), and Executive Order (EO) 12114, the Department of the Navy (Navy) announces its intent to prepare an Environmental Impact Statement (EIS)/ Overseas EIS (OEIS) to evaluate the potential environmental effects associated with continuing to conduct military readiness activities, which

consist of training activities and research, development, testing, and evaluation (hereinafter referred to as "testing") activities in the Hawaii-Southern California Training and Testing (HSTT) Study Area. The Study Area consists of the in-water areas of the Southern California (SOCAL) Range Complex (including San Diego Bay); in-water areas of Silver Strand Training Complex (SSTC); the Hawaii Range Complex (HRC); areas on the high seas where training and sonar testing and maintenance may occur during vessel transit between the Hawaii and Southern California Range Complexes; the Temporary Operating Area north and west of the Hawaii Range Complex; and specific Navy pierside, port, and harbor locations.

In order to achieve and maintain military readiness, the Navy proposes to:

- Conduct training and testing activities at levels required to support Navy military readiness requirements beginning in December 2018 into the reasonably foreseeable future; and
- Accommodate evolving mission requirements associated with force structure changes, including those resulting from the development, testing, and ultimate introduction of new platforms (vessels, aircraft, and weapon systems) into the fleet; thereby ensuring critical Navy requirements are met.

As part of this process the Navy will seek to obtain authorization and permitting, as required under the Marine Mammal Protection Act and Endangered Species Act, respectively.

The Navy invites comments on the scope and content of the EIS/OEIS from all interested parties. Comments may be provided by mail and through the EIS/OEIS Web site at: <http://www.hstteis.com>. Mailed comments must be postmarked no later than January 16, 2016 and mailed to the address below to ensure they are considered.

In addition, the Navy will conduct public scoping meetings to obtain comments on the scope of the EIS/OEIS and to identify specific environmental concerns or topics for consideration in the document.

- DATES:** *Dates and Addresses:* Three public scoping meetings will be held on:
1. Tuesday, December 1, 2015, 5:00-8:00 p.m., Marina Village Conference Center Starboard Room, 1936 Quivira Way, San Diego, CA 92109
 2. Thursday, December 3, 2015, 5:00-8:00 p.m., Island School Main Hall, 3-1901 Kaunualii Highway Lihue, Kauai, HI 96766
 3. Saturday, December 5, 2015, 11:00-2:00 p.m., Ke'ehi Lagoon Memorial,

2685 N. Nimitz Highway, Honolulu, HI 96819

The scoping meetings will consist of an informal, open-house session with informational stations staffed by Navy representatives. Meeting details will be announced in local newspapers. Additional information on the public scoping meetings will be available on the EIS/OEIS Web page located at: <http://www.hstteis.com>.

FOR FURTHER INFORMATION CONTACT: Nora Macariola-See, Naval Facilities Engineering Command, Pacific. Attention: HSTT EIS/OEIS, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134. 808–472–1402.

SUPPLEMENTARY INFORMATION: The Navy's lead action proponent is Commander, United States Pacific Fleet. Additional action proponents include Naval Sea Systems Command (NAVSEA), Naval Air Systems Command (NAVAIR), Space and Naval Warfare Systems Command (SPAWAR), and the Office of Naval Research (ONR). The Proposed Action is to conduct military readiness activities in the HSTT Study Area. These training and testing activities are generally consistent with those analyzed in the HSTT EIS/OEIS completed in August 2013 and are representative of training and testing that the Navy has been conducting in the HSTT Study Area for decades.

The HSTT EIS/OEIS Study Area includes the HRC, the SOCAL Range Complex, in-water areas of SSTC, and San Diego Bay. It also includes the transit corridor between the HRC and the SOCAL Range Complex, as well as the Temporary Operating Area north and west of the HRC. Analysis will include in-water areas and activities, including pierside locations and harbors.

Pursuant to 40 CFR 1501.6, the Navy will invite the National Marine Fisheries Service to be a cooperating agency in preparation of the EIS/OEIS.

The purpose of the Proposed Action is to maintain a ready force, which is needed to ensure that the Navy can meet its mission to maintain, train, and equip combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas, consistent with Congressional direction in section 5062 of Title 10 of the U.S. Code.

The HSTT Phase III EIS/OEIS will consider a No Action Alternative and action alternatives that account for levels of training and testing activities beginning in December 2018 as necessary to meet future readiness requirements. Refurbishment of existing

undersea instrumented ranges is also being considered.

Resource areas that will be addressed include, but are not limited to, biological resources (including marine mammals and threatened and endangered species), sediments and water quality, air quality, noise, cultural resources, socioeconomic resources, and public health and safety.

The scoping process will be used to identify community concerns and local issues to be addressed in the EIS/OEIS. Federal agencies, state agencies, local agencies, Native American Indian Tribes and Nations, Native Hawaiian Organizations, the public, and interested persons are encouraged to provide comments to the Navy to identify specific issues or topics of environmental concern that the commenter believes the Navy should consider. All comments provided orally or in writing at the scoping meetings will receive the same consideration during EIS/OEIS preparation.

Written comments must be postmarked no later than January 12, 2016 to ensure they are considered in the development of the EIS/OEIS and be mailed to: Naval Facilities Engineering Command, Pacific, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134, Attention: HSTT EIS/OEIS Project Manager. Comments also can be submitted electronically by January 12, 2016 via the project Web site at <http://www.hstteis.com>.

Dated: November 5, 2015.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2015–28748 Filed 11–10–15; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity Meeting; Update and Correction

AGENCY: National Advisory Committee on Institutional Quality and Integrity (NACIQI), U.S. Department of Education.

ACTION: Announcement of the time and location of the NACIQI meeting; and a correction to the agenda.

SUMMARY: This meeting notice is an update to the previous notice published in the *Federal Register* (176 FR 54774) on September 11, 2015, and sets forth the time and location for the December 16, 17, and 18, 2015 NACIQI meeting. This notice also provides a correction to the current and requested scopes of recognition for the Western Association

of Schools and Colleges, Accrediting Commission for Community Colleges and Junior Colleges (WASC ACCJC), and clarifies the scope of review to be conducted at the meeting for the Northwest Commission on Colleges and Universities (NWCCU) and WASC ACCJC. Further, this notice adds an item to the agenda. The notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (FACA) and Section 114(d)(1)(B) of the Higher Education Act of 1965 (HEA), as amended.

DATES: The NACIQI meeting will be held on December 16, 17, and 18, 2015, from 8:00 a.m. to 5:30 p.m., at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Jennifer Hong, Executive Director/ Designated Federal Official, NACIQI, U.S. Department of Education, 1990 K Street NW., Room 8073, Washington, DC 20006–8129, telephone: (202) 502–7696; fax: (202) 502–7874, or email: Jennifer.Hong@ed.gov.

SUPPLEMENTARY INFORMATION:

Meeting Agenda Correction: A correction to current and requested scopes of recognition for the Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges (WASC ACCJC); clarification regarding the scope of review at the meeting for the Northwest Commission on Colleges and Universities (NWCCU) and WASC ACCJC; and addition of an agenda item.

Below is the requested and current scopes of recognition for WASC ACCJC, scheduled for review during the December 2015 meeting:

Compliance Report

Current Scope of Recognition: The accreditation and preaccreditation (“Candidate for Accreditation”) of community and other colleges with a primarily pre-baccalaureate mission located in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands, which offer certificates, associate degrees, and the first baccalaureate degree by means of a substantive change review offered by institutions that are already accredited by the agency, and such programs offered via distance education and correspondence education at these colleges. This recognition also extends to the Committee on Substantive Change of the Commission, for decisions on

substantive changes, and the Appeals Panel.

Requested Scope of Recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of community and other colleges in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Marianas, and the Republic of the Marshall Islands, which have as a primary mission the granting of associate degrees, but which may also award certificates and other credentials, including bachelor's degrees, where the provision of such credentials is within the institution's mission and, if applicable, is authorized by their governmental authorities, and the accreditation of such programs offered via distance education and correspondence education at these colleges. This recognition also extends to the Committee on Substantive Change of the Commission, for decisions on substantive changes, and the Appeals Panel.

Clarification Regarding Scope of Review

Decisions letters issued in January 2014 by the senior Department official on recognition matters are posted on the Department's Web site at: <https://opeweb.ed.gov/aslweb/index.cfm>.

NWCCU and WASC ACCJC timely appealed to the Secretary from several of the findings contained in the senior Department official's January 2014 decision letters to those agencies.

1. NWCCU (Compliance Report)

The agency appealed five of the ten findings outlined in the senior Department official's January 2014 decision letter.

The agency prevailed on appeal on three of the five issues. As a consequence of the appeal, only the following five remaining findings will be considered at the December 2015 meeting for NWCCU: 34 CFR 602.15(a)(5); 602.16(a)(1)(ix); 602.20(b); 602.23(c); and 602.26(d). The Secretary's December 2014 appeal decision may be found here: <http://oha.ed.gov/secretaryindex.html>

2. WASC ACCJC (Compliance Report)

The agency appealed two of the 15 findings outlined in the senior Department official's January 2014 decision letter. The appeal remains pending. Because those two findings remain on appeal, only the other 13 findings addressed in the senior Department official's decision letter will

be considered at the December 2015 meeting for WASC ACCJC: 34 CFR 602.12(b); 602.16(a)(1)(i); 602.16(a)(1)(ii); 602.16(a)(1)(iii); 602.17(a); 602.17(f); 602.18(e); 602.19(b); 602.20(a); 602.20(b); 602.21(c); 602.25(c); and 602.26(b).

Public comments (written and oral) for NWCCU and WASC ACCJC must be confined to the criteria for recognition listed above.

3. Scope of Review at the December 2015 Meeting for Agencies Other Than NWCCU and WASC ACCJC

Public comments (written and oral) for all other agencies listed on the December agenda for consideration of compliance reports must relate to issues identified in the senior Department official's letter that requested the report.

Public comments (written and oral) for agencies listed on the December agenda for consideration for initial or renewal of recognition must relate to the agency's compliance with the Criteria for the Recognition of Accrediting Agencies [34 CFR 602], the Criteria and Procedures for Recognition of State Agencies for the Approval of Public Postsecondary Vocational Education [34 CFR 603], and the Criteria and Procedures for Recognition of State Agencies for Approval of Nurse Education, as appropriate.

Addition of Agenda Item: On Wednesday, December 16, 2015, the NACIQI will receive a briefing to continue their discussion from the June 25–26, 2015 meeting regarding how to frame the NACIQI's policy agenda to inform the agency recognition process and to develop broader perspectives about how accrediting agencies consider data about student outcomes. The briefing and attendant discussion will commence prior to the review of agencies on the agenda, and will resume after the NACIQI has completed its review of agencies.

Access to Records of the Meeting: The Department will post the official report of the meeting on the NACIQI Web site 90 days after the meeting. Pursuant to the FACA, the public may also inspect the materials at 1990 K Street NW., Washington, DC, by emailing aslrecordsmanager@ed.gov or by calling (202) 219–7067 to schedule an appointment.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting

date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Delegation of Authority: The Secretary of Education has delegated authority to Jamiene S. Studley, Deputy Under Secretary, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Authority: Section 114 of the HEA of 1965, as amended, 20 U.S.C. 1011c.

Jamiene S. Studley,

Deputy Under Secretary.

[FR Doc. 2015–28746 Filed 11–10–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–255–000]

East Coast Power & Gas of New Jersey, 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 East Coast Power & Gas of New Jersey, 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 November 24, 2015.

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 Web site 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: November 4, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-28640 Filed 11-10-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at the Illinois Commerce Commission's "Planning For The Future" Policy Session; Focus on 2015-2016 Winter Preparedness and Resource Adequacy in the Ameren Illinois Footprint

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff may attend the above meeting of the Illinois Commerce Commission (ICC). Their attendance is part of the Commission's ongoing outreach efforts.

The meeting will be held on November 19, 2015 from 10:00 a.m. to 3:00 p.m. at in the Main Hearing Room at the ICC's Chicago office, 160 North LaSalle, Suite C-800, Chicago, IL 60601.

The discussions may address matters at issue in the following proceedings:

- Docket No. ER11-4081, *Midwest Independent System Operator, Inc.*
- Docket No. EL12-54, *Viridity Energy, Inc. v. PJM Interconnection, L.L.C.*
- Docket No. ER13-535, *PJM Interconnection, L.L.C.*
- Docket No. ER13-2108, *PJM Interconnection, L.L.C.*
- Docket No. ER14-504, *PJM Interconnection, L.L.C.*
- Docket No. ER14-822, *PJM Interconnection, L.L.C.*
- Docket Nos. ER14-1461 and EL14-48, *PJM Interconnection, L.L.C.*
- Docket No. ER14-2940, *PJM Interconnection, L.L.C.*
- Docket No. ER15-135, *PJM Interconnection, L.L.C.*
- Docket Nos. ER15-623 and EL15-29, *PJM Interconnection, L.L.C.*
- Docket No. EL14-20, *Independent Market Monitor for PJM v. PJM Interconnection, L.L.C.*
- Docket Nos. EL14-94 and EL14-36, *FirstEnergy Solutions Corp. and PJM Interconnection, L.L.C.*
- Docket No. EL14-55, *FirstEnergy Service Company v. PJM Interconnection, L.L.C.*
- Docket No. EL15-41, *Essential Power Rock Springs, L.L.C. et al. v. PJM Interconnection, L.L.C.*
- Docket No. EL15-46, *Champion Energy Marketing L.L.C. v. PJM Interconnection, L.L.C.*
- Docket No. EL15-80, *Advanced Energy Management Alliance Coalition v. PJM Interconnection, L.L.C.*
- Docket No. EL15-83, *National Resources Defense Council, et al., v. PJM Interconnection, L.L.C.*
- Docket No. EL15-70, *Public Citizen, Inc. v. Midcontinent Independent System Operator, Inc.*

Docket No. EL15-71, *People of the State of Illinois v. Midcontinent Independent System Operator, Inc.*

Docket No. EL15-72, *Southwestern Electric Cooperative, Inc. v. Midcontinent Independent System Operator, Inc.*

Docket No. EL15-82, *Illinois Industrial Energy Consumers v. Midcontinent Independent System Operator, Inc.*

The meeting is open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249-5937 or patrick.clarey@ferc.gov.

Dated: November 4, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-28642 Filed 11-10-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15-89-000]

Transcontinental Gas Pipe Line Company, LL; Notice of Availability of the Environmental Assessment for the Proposed Garden State Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Garden State Expansion Project, proposed by Transcontinental Gas Pipe Line Company, LLC (Transco) in the above-referenced docket. Transco requests authorization to construct and operate a new compressor station and a new meter and regulating station in Burlington County, New Jersey and construct and modify an existing compressor station and related appurtenant facilities in Mercer County, New Jersey.

The EA assesses the potential environmental effects of the construction and operation of the Garden State Expansion Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Garden State Expansion Project includes the following facilities:

Phase 1 (Targeted In-Service Date of November 1, 2016)

- Chesterfield Meter and Regulating (M&R) Station, Burlington County, New Jersey—new meter and regulating station near milepost (MP) 15.2 on Transco's Trenton-Woodbury Lateral;
- Compressor Station 205 (Station 205), Mercer County, New Jersey—Uprate Unit 3 existing motor to 25,000 horsepower (hp) and related minor ancillary modifications; and
- Valves and tie-in piping extending from Trenton-Woodbury Lateral to Chesterfield M&R and the future location of Compressor Station 203 (Station 203).

Phase 2 (Targeted In-Service Date of August 1, 2017)

- Station 205, Mercer County, New Jersey—Units 1 and 2: Replace existing compressors and uprate electric motors each to 16,000 hp, including minor ancillary modifications;
- Station 203, Burlington County, New Jersey—new compressor Station consisting of a single 30,500 hp electric motor driven unit near MP15.2 on the Trenton-Woodbury Lateral;
- Electrical Substation, Burlington County, New Jersey—new electrical substation to power Station 203; and
- Automate 15-inch block valve J736 located on the Trenton-Woodbury Lateral, Burlington County, New Jersey.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (www.ferc.gov) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502-8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before December 4, 2015.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP15-89-000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502-8258 or efiling@ferc.gov.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (www.ferc.gov) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's Web site (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).¹ Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC Web site (www.ferc.gov) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field (*i.e.*, CP15-89). Be sure you have selected an appropriate date range. For assistance,

¹ See the previous discussion on the methods for filing comments.

please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to www.ferc.gov/docs-filing/esubscription.asp.

Dated: November 4, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-28633 Filed 11-10-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER16-256-000]

CEP&G 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 CEP&G 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 November 24, 2015.

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 Web site 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: November 4, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-28641 Filed 11-10-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15-209-000.

Applicants: CPV Sentinel, LLC.

Description: Clarification to September 23, 2015 Application for Authorization Under Section 203 of the Federal Power Act and Request for Expedited Action and Shortened Comment Period of CPV Sentinel, LLC.

Filed Date: 11/3/15.

Accession Number: 20151103-5229.

Comments Due: 5 p.m. ET 11/13/15.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16-16-000.

Applicants: OCI Alamo 6 LLC.

Description: OCI Alamo 6 LLC Self-Certification of EWG Status.

Filed Date: 11/4/15.

Accession Number: 20151104-5096.

Comments Due: 5 p.m. ET 11/25/15.

Docket Numbers: EG16-17-000.

Applicants: OCI Alamo 7 LLC.

Description: OCI Alamo 7 LLC Self-Certification of EWG.

Filed Date: 11/4/15.

Accession Number: 20151104-5099.

Comments Due: 5 p.m. ET 11/25/15.

Docket Numbers: EG16-18-000.

Applicants: OCI Solar TRE LLC.

Description: OCI Solar TRE LLC Notice Self-Certification of EWG.

Filed Date: 11/4/15.

Accession Number: 20151104-5100.

Comments Due: 5 p.m. ET 11/25/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15-2668-000.

Applicants: Land of the Sky MT, LLC.

Description: Supplement to September 17, 2015 Land of the Sky MT, LLC tariff filing.

Filed Date: 11/2/15.

Accession Number: 20151102-5300.

Comments Due: 5 p.m. ET 11/12/15.

Docket Numbers: ER16-121-000; EL16-6-001.

Applicants: PJM Interconnection, L.L.C.

Description: Errata to the EL16-6-000 Filing to Correct the Proposed Effective Date to 6/1/16 to be effective 6/1/2016.

Filed Date: 10/30/15.

Accession Number: 20151030-5391.

Comments Due: 5 p.m. ET 11/9/15.

Docket Numbers: ER16-259-000.

Applicants: C.P. Crane LLC.

Description: Initial rate filing:

Reactive Rate Schedule FERC No. 2 to be effective 1/3/2016.

Filed Date: 11/4/15.

Accession Number: 20151104-5122.

Comments Due: 5 p.m. ET 11/25/15.

Docket Numbers: ER16-260-000.

Applicants: DTE East China, LLC.

Description: Tariff Cancellation: Cancellation of East China Tariff No 4 and 5 to be effective 11/4/2015.

Filed Date: 11/4/15.

Accession Number: 20151104-5126.

Comments Due: 5 p.m. ET 11/25/15.

Docket Numbers: ER16-261-000.

Applicants: PJM Interconnection, L.L.C., Commonwealth Edison Company.

Description: § 205(d) Rate Filing: ComEd submits Attach. M-2 to incorporate provisions being removed in Attach. W to be effective 1/4/2016.

Filed Date: 11/4/15.

Accession Number: 20151104-5128.

Comments Due: 5 p.m. ET 11/25/15.

Docket Numbers: ER16-262-000.

Applicants: Uniper Global Commodities North America LLC.

Description: § 205(d) Rate Filing: 2016 normal to be effective 1/1/2016.

Filed Date: 11/4/15.

Accession Number: 20151104-5144.

Comments Due: 5 p.m. ET 11/25/15.

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: November 4, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-28632 Filed 11-10-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16-160-000]

New-Indy Ontario 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 New-Indy Ontario 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 November 24, 2015.

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 Web site 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: November 4, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-28636 Filed 11-10-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16-161-000]

New-Indy Oxnard 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 New-Indy Oxnard 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 November 24, 2015.

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 Web site 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: November 4, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-28637 Filed 11-10-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP15-115-001; CP15-115-000]

National Fuel Gas Supply Corporation Empire Pipeline, Inc.; Notice of Amendment to Application

Take notice that on November 2, 2015, National Fuel Gas Supply Corporation (National Fuel) and Empire Pipeline, Inc. (Empire), 6363 Main

Street, Williamsville, New York 14221, filed an amendment to their application in Docket Number CP15-115-000, pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity to construct and operate the Northern Access 2016 Project (the "Project"), and authorization to abandon and acquire certain related facilities. The Project will be located in McKean County, Pennsylvania and Allegheny, Cattaraugus, Erie and Niagara Counties, New York. The filing may 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 Kenneth E. Webster, Attorney for National Fuel and Empire, 6363 Main Street, Williamsville, New York 14221, or call at (716) 857-7067.

Specifically, National Fuel requests authorization: (i) To construct 96.49 miles of 24-inch diameter pipeline; (ii) to add 5,350 horsepower (hp) of compression at the Porterville, New York compressor station; (iii) to construct an interconnect meter and regulation (M&R) station with Tennessee Gas Pipeline Company, L.L.C.'s 200 Line; (iv) to construct an M&R station and tie-in in Hinsdale, New York; (v) to construct an interconnection with NFG Midstream Clermont, L.L.C.; (vi) to construct a new tie-in; (vii) to construct a pressure reduction station; (viii) to abandon, via sale to Empire, 1.08 miles of National Fuel's existing Line XM-10 pipeline and certain other existing facilities; (ix) to charge an initial incremental firm recourse rate for the Project; and (x) for a limited waiver of General Terms and Conditions Section 31.1 of National Fuel's tariff to permit the Project's Foundation Shipper to shift its primary delivery point for a portion of the Project's incremental capacity more than ninety days after its initial request. National Fuel proposes to provide 497,000 dekatherms per day of new firm natural gas transportation capacity.

Empire requests authorization to: (i) Construct a new 22,214 hp compressor station in Pendleton, New York; (ii) construct and operate approximately 0.90 miles of 16-inch pipeline; (iii) construct and operate approximately 1.17 miles of 24-inch pipeline; (iv) construct a new dehydration facility; (v)

construct two new tie-ins; and (vi) acquire from National Fuel the aforementioned 1.08 miles of Line XM-10. Empire proposes to provide 350,000 dekatherms per day of new firm natural gas transportation capacity.

National Fuel and Empire request authorization to abandon their jointly owned meter station along Line XM-10 in Pendleton, New York. The total cost of the Project would be approximately \$376,670,388 (National Fuel) and \$78,710,359 (Empire).

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 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 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of

comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: 5:00 p.m. Eastern Time on November 25, 2015.

Dated: November 4, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-28634 Filed 11-10-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15-537-000]

DBM Pipeline, LLC; Notice of Withdrawal of Staff Protest to Proposed Blanket Certificate Activity

Commission staff (Protestor) hereby withdraws its Protest to the Proposed Blanket Certificate Activity filed in the above-referenced proceeding on October 2, 2015.

In its prior notice request filed on July 27, 2015 (in Docket No. CP15-537-000) and noticed on August 6, 2015,¹ DBM Pipeline, LLC (DBM Pipeline) proposed to construct and operate approximately 9 miles of 20-inch-diameter pipeline in Reeves and Culberson Counties, Texas, and Eddy County, New Mexico (Project). Protestor protested the prior notice request filed under the provisions of Part 157, subpart F, of the Commission's regulations, because DBM Pipeline did not file in its application or supplemental filings, the Bureau of Land Management comments on the Project and did not provide adequate avoidance plans to have no effect on historic properties. In addition DBM Pipeline did not provide complete responses to the FERC Environmental Data Request dated September 23, 2015.

Protestor notes that on November 3, 2015, DBM Pipeline filed a data response with comments from the Texas and New Mexico State Historic Preservation Officers (SHPOs), dated June 23, 2015 and October 27, 2015 respectively, stating that the Project would either have no effect on or would avoid historic properties. DBM Pipeline also filed an avoidance plan for three cultural resources in New Mexico. Additionally, the BLM agreed with the avoidance plan and stated the Project would have no effect on historic properties in a letter dated November 2, 2015. FERC staff agrees with the Texas and New Mexico SHPOs and finds the avoidance plan acceptable. Finally, DBM Pipeline submitted complete responses to the FERC Environmental Data Request dated September 23, 2015.

Thus, Protestor's environmental concern has been satisfied. Accordingly, Protestor hereby withdraws its Protest to the Proposed Blanket Certificate Activity filed in the instant docket on October 2, 2015.

Dated: November 4, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-28635 Filed 11-10-15; 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:

¹Notice of the request was published in the **Federal Register** on August 13, 2015 (80 *Fed. Reg.* 48520).

Docket Numbers: EC16–26–000.
Applicants: Waverly Wind Farm LLC.
Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Waverly Wind Farm LLC.

Filed Date: 11/3/15.

Accession Number: 20151103–5227.

Comments Due: 5 p.m. ET 11/24/15.

Docket Numbers: EC16–27–000.
Applicants: Carousel Wind Farm, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Expedited Action of Carousel Wind Farm, LLC.

Filed Date: 11/3/15.

Accession Number: 20151103–5247.

Comments Due: 5 p.m. ET 11/24/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–2529–004.

Applicants: Pacific Gas and Electric Company.

Description: Compliance filing: eTariff Migration Compliance Filing for TO16 Settlement to be effective 7/23/2015.

Filed Date: 10/28/15.

Accession Number: 20151028–5216.

Comments Due: 5 p.m. ET 11/18/15.

Docket Numbers: ER15–1687–003.

Applicants: Blue Cube Operations LLC.

Description: Notice of Change in Status of Blue Cube Operations LLC.

Filed Date: 11/3/15.

Accession Number: 20151103–5264.

Comments Due: 5 p.m. ET 11/24/15.

Docket Numbers: ER16–251–000.

Applicants: AEP Generation Resources Inc.

Description: § 205(d) Rate Filing: Mitchell Plant Concurrence RS 303 Cancellation to be effective 1/31/2015.

Filed Date: 11/3/15.

Accession Number: 20151103–5189.

Comments Due: 5 p.m. ET 11/24/15.

Docket Numbers: ER16–252–000.

Applicants: Kentucky Power Company.

Description: § 205(d) Rate Filing: Mitchell Agreement Cancellation to be effective 1/31/2015.

Filed Date: 11/3/15.

Accession Number: 20151103–5192.

Comments Due: 5 p.m. ET 11/24/15.

Docket Numbers: ER16–253–000.

Applicants: AEP Generation Resources Inc.

Description: § 205(d) Rate Filing: AEP GR MBR Tariff Mitchell Cleanup Filing to be effective 1/31/2015.

Filed Date: 11/3/15.

Accession Number: 20151103–5193.

Comments Due: 5 p.m. ET 11/24/15.

Docket Numbers: ER16–254–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Ministerial Filing of Non-Substantive Membership Agreement Revisions to be effective 10/1/2015.

Filed Date: 11/3/15.

Accession Number: 20151103–5199.

Comments Due: 5 p.m. ET 11/24/15.

Docket Numbers: ER16–255–000.

Applicants: East Coast Power & Gas of New Jersey, LL.

Description: Baseline eTariff Filing: ECP&G NJ Market Based Rate Tariff to be effective 1/1/2016.

Filed Date: 11/3/15.

Accession Number: 20151103–5201.

Comments Due: 5 p.m. ET 11/24/15.

Docket Numbers: ER16–256–000.

Applicants: CEP&G LLC.

Description: Baseline eTariff Filing: CEP&G LLC Market Based Rate Tariff to be effective 1/1/2016.

Filed Date: 11/3/15.

Accession Number: 20151103–5202.

Comments Due: 5 p.m. ET 11/24/15.

Docket Numbers: ER16–257–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Amendment of LGIA, Service Agreement No. 171 to be effective 1/3/2016.

Filed Date: 11/3/15.

Accession Number: 20151103–5205.

Comments Due: 5 p.m. ET 11/24/15.

Docket Numbers: ER16–258–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: True-Up SGIA and Distribution Service Agmt Golden Springs to be effective 1/4/2016.

Filed Date: 11/4/15.

Accession Number: 20151104–5001.

Comments Due: 5 p.m. ET 11/25/15.

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: November 4, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–28631 Filed 11–10–15; 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: RP16–165–000.

Applicants: Alliance Pipeline L.P.

Description: § 4(d) Rate Filing:

Resubmit Oct 15–31 2015 Auction to be effective 10/15/2015.

Filed Date: 11/3/15.

Accession Number: 20151103–5001.

Comments Due: 5 p.m. ET 11/16/15.

Docket Numbers: RP16–166–000.

Applicants: Ozark Gas Transmission, L.L.C.

Description: § 4(d) Rate Filing:

Munich Re Trading Negotiated Rate eff 12–1–2015 to be effective 12/1/2015.

Filed Date: 11/3/15.

Accession Number: 20151103–5061.

Comments Due: 5 p.m. ET 11/16/15.

Docket Numbers: RP16–167–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: ConEd

Ramapo Releases for 11–3–2015 to be effective 11/3/2015.

Filed Date: 11/3/15.

Accession Number: 20151103–5066.

Comments Due: 5 p.m. ET 11/16/15.

Docket Numbers: RP16–169–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Rate Case Settlement Amendments Filing 2-resubmission to be effective 11/1/2015.

Filed Date: 11/3/15.

Accession Number: 20151103–5203.

Comments Due: 5 p.m. ET 11/16/15.

Docket Numbers: RP16–170–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: Neg Rate 2015–11–04 ConocoPhillips to be effective 11/4/2015.

Filed Date: 11/4/15.

Accession Number: 20151104–5002.

Comments Due: 5 p.m. ET 11/16/15.

Docket Numbers: RP16–171–000.

Applicants: Texas Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Neg Rate Agmt Filing (Tenaska 35178) to be effective 11/1/2015.

Filed Date: 11/4/15.

Accession Number: 20151104-5062.

Comments Due: 5 p.m. ET 11/16/15.

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: November 04, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-28643 Filed 11-10-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16-182-000]

Cameron Ridge II, 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 Cameron Ridge II, 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 November 24, 2015.

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 Web site 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: November 4, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-28639 Filed 11-10-15; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9937-00-OA]

Local Government Advisory Committee: Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its Local Government Advisory Committee (LGAC). The LGAC is chartered to provide advice to the EPA Administrator on a broad range of environmental issues affecting local

governments. This notice solicits nominations for eight to twelve (8-12) anticipated vacancies. To maintain the representation outlined by the charter, nominees will be selected to represent: large cities, moderate-sized cities, small communities, and townships (under 10,000); county-elected officials-urban, suburban and rural; city elected and appointed officials (city council members, city managers); state elected and appointed officials (state representatives, public health, agricultural and state environmental commissioners); and tribal elected and appointed officials (chair, president, natural resources directors). Vacancies are anticipated to be filled by March 2016. Sources in addition to this **Federal Register** publication may be utilized in the solicitation of nominees. **DATES:** Nominations should be submitted at least by December 14, 2015.

ADDRESSES: Submit nominations electronically with the subject line "LGAC Membership 2016" to eargle.frances@epa.gov. You may also submit nominations by mail to: Frances Eargle, LGAC Designated Federal Officer, Office of Congressional and Intergovernmental Relations (OCIR), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., (MC1301A), Washington, DC 20460. Non-electronic submissions must follow the same format and contain the same information.

FOR FURTHER INFORMATION CONTACT:

Frances Eargle, Designated Federal Officer for the LGAC, U.S. EPA; telephone (202) 564-3115; email: eargle.frances@epa.gov.

SUPPLEMENTARY INFORMATION: The LGAC is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92-463. EPA established the LGAC in 1993 to provide independent advice to the EPA Administrator on a broad range of public health and environmental issues affecting local governments. The LGAC conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App2) and related regulations.

The Committee consists of approximately 30 members (including a Chairperson) appointed by the EPA's Administrator. Members serve as non-federal stakeholders representing: Large cities, moderate-sized cities, small communities, and townships (under 10,000); county-elected officials-urban, suburban and rural; city elected and appointed officials (city council members, city managers); state elected and appointed officials (state

representatives, state environmental and public health commissioners); and tribal elected and appointed officials (chair, president, natural resources directors). Members are appointed for one or two (1–2) year terms, and eligible for reappointment.

The LGAC usually meets two or three times a year. Additionally, members may be asked to participate in teleconference meetings or serve on a subcommittee and workgroups to develop recommendations, advice letters and reports to address specific policy issues. The average workload for members is approximately 3–6 hours per month. Honoraria or compensation for your services is not authorized, however, you may receive travel and per diem allowances where appropriate and according to applicable federal travel regulations.

Nominations: The EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, the agency encourages nominations of women and men from racially, ethnically, and socio-economically diverse communities. All nominations will be fully considered, but applicants need to be aware of the specific representation sought as outlined in the Summary above. In addition, EPA is seeking nominees with demonstrated local leadership in community sustainability and sustainable development; public health and health disparities; air and water quality issues; climate change and climate resiliency; green jobs and economic initiatives; and energy and environmental financing.

Other criteria used to evaluate nominees will include:

- The background and experience that would help members contribute to the diversity of perspectives on the committee (e.g., geographic, economic, social, cultural, educational background, professional affiliations, and other considerations);
- Demonstrated experience as elected and/or appointed official for a local, state or tribal government;
- Demonstrated experience working with officials from other governments or other levels of government (e.g., other local governments, federal agencies);
- Excellent interpersonal and consensus-building skills;
- Ability to volunteer time to attend meetings 2–3 times a year, participate in teleconference meetings, attend listening sessions with the Administrator or other senior-level EPA officials, develop policy recommendations to the Administrator and prepare reports and advice letters; and

- Willingness to commit time to the committee and demonstrated ability to work constructively and effectively on committees.

How to submit nominations: Any interested person or organization may nominate qualified persons to be considered for appointment to this advisory committee. Individuals may self-nominate. Nominations can be submitted in electronic format (preferred) or in hard copy format (see **ADDRESSES** section above). To be considered, all nominations should include:

- Current contact information for the nominee, including the nominee's name, organization (and position within that organization), current business address, email address, and daytime telephone number;
- A brief statement describing the nominee's interest in serving on the LGAC; and
- A resume and short biography describing the professional and educational qualifications of the nominee, including a list of relevant activities, and any current or previous service on advisory committees; and Letter(s) of recommendation from a third party supporting the nomination. Letter(s) should describe how the nominee's experience and knowledge will bring value to the work of the LGAC.

Other sources, in addition to this **Federal Register** notice, may be utilized in the solicitation of nominees. To help the EPA in evaluating the effectiveness of its outreach efforts, please tell us how you learned of this opportunity.

Dated: November 3, 2015.

Frances Eargle,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 2015–28759 Filed 11–10–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0928]

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 (44 U.S.C. 3501–3520), 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 January 11, 2016. 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 No.: 3060–0928.

Title: FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule F (Formerly FCC 302–CA); 47 CFR 73.3572(h) and 47 CFR 73.3700(b).

Form No.: FCC Form 2100, Schedule F.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, local or Tribal Government.

Number of Respondents and Responses: 955 respondents and 955 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: One-time reporting requirement and on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 307, 308, 309, and 319 of the Communications Act of 1934, as amended, the Community Broadcasters Protection Act of 1999, and the Middle Class Tax Relief and Job Creation Act of 2012.

Total Annual Burden: 1,910 hours.

Annual Cost Burden: \$300,825.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality:

There is no need for confidentiality with this collection of information.

Needs and Uses: The collection is being made to the Office of Management (OMB) for the approval of information collection requirements contained in the Commission's Incentive Auction Order, FCC 14-50, which adopted rules for holding an Incentive Auction, as required by the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). The information gathered in this collection will be used by Class A stations seeking a license to cover their authorized construction permit facilities and Class A stations entering into a channel sharing agreement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2015-28629 Filed 11-10-15; 8:45 am]

BILLING CODE 6212-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0295]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

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 (44 U.S.C. 3501-3520), 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 January 11, 2016. 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: 3060-0295.

Title: Section 90.607, Supplemental Information to be Furnished by Applicants For Facilities Under Subpart S.

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 and Responses: 243 respondents; 243 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: One time reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 308(b).

Total Annual Burden: 61 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Section 90.607 requires the affected applicants to submit a list of any radio facilities they hold within 40 miles of the base station transmitter site being applied for.

This information is used to determine if an applicant's proposed system is necessary in light of communications facilities it already owns. Such a determination helps the Commission to equitably distribute limited spectrum and prevents spectrum warehousing.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2015-28638 Filed 11-10-15; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0837]

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 (44 U.S.C. 3501-3520), 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 January 11, 2016. 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 No.: 3060-0837.

Title: FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule B (Former FCC Form 302-DTV).

Form No.: FCC Form 2100, Schedule B.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit entities; Not for profit institutions.

Number of Respondents and Responses: 955 respondents and 955 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: One-time reporting requirement and on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i), 307, 308, 309, and 319 of the Communications Act of 1934, as amended; the Community Broadcasters Protection Act of 1999, Public Law 106-113, 113 Stat. Appendix I at pp. 1501A-594-1501A-598 (1999) (codified at 47 U.S.C. 336(f)); and the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, §§ 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act).

Total Annual Burden: 1,910 hours.

Annual Cost Burden: \$460,070.00.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The collection is being made to the Office of Management (OMB) for the approval of information collection requirements contained in the Commission's Incentive Auction Order, FCC 14-50, which adopted rules for holding an Incentive Auction, as required by the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum

Act). The information gathered in this collection will be used to allow full-power television broadcast stations to file a license to cover an authorized construction permit once facilities have been constructed. In addition, full-power television broadcast stations that enter into channel sharing agreements following the Commission's Incentive Auction will use FCC Form 2100, Schedule B to file an application for a license for the shared channel sharing, and will allow a full-power station, upon termination of its channel sharing agreement, to file an application to change its license to non-shared status using FCC Form 2100, Schedule B.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2015-28628 Filed 11-10-15; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0386]

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 (44 U.S.C. 3501-3520), 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 January 11, 2016. 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 No.: 3060-0386.

Title: Special Temporary Authorization (STA) Requests; Notifications; and Informal Filings; Sections 1.5, 73.1615, 73.1635, 73.1740 and 73.3598; CDBS Informal Forms; Section 74.788; Low Power Television, TV Translator and Class A Television Digital Transition Notifications; Section 73.3700(b)(5), Post Auction Licensing; Section 73.3700(f), Service Rule Waiver; FCC Form 337.

Form No.: FCC Form 337.

Type of Review: Revision of a currently information collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 6,609 respondents and 6,609 responses.

Estimated Time per Response: .50-4.0 hours.

Frequency of Response: One-time reporting requirement and on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 157 and 309(j) as amended; Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, §§ 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act); and Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 of the Communications Act of 1934, as amended.

Total Annual Burden: 5,475 hours.

Annual Cost Burden: \$2,156,510.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The collection is being made to the Office of Management (OMB) for the approval of information collection requirements contained in the Commission's Incentive Auction Order, FCC 14–50, which adopted rules for holding an Incentive Auction, as required by the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). The information gathered in this collection will be used to allow television broadcast stations to request special temporary authority (STA) to operate, seek an extension of time to complete construction, request a waiver of the Commission's service rules following the Incentive Auction, and make other informal requests and submissions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2015–28630 Filed 11–10–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0932]

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 (44 U.S.C. 3501–3520), 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 January 11, 2016. 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 No.: 3060–0932.

Title: FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule E (Former FCC Form 301–CA); 47 CFR Sections 73.3700(b)(1)(i)–(v) and (vii), (b)(2)(i) and (ii); 47 CFR Section 74.793(d).

Form No.: FCC Form 2100, Schedule E (Application for Media Bureau Audio and Video Service Authorization) (Former FCC Form 301–CA).

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 725 respondents and 725 responses.

Estimated Time per Response: 2.25 hours–6 hours (for a total of 8.25 hours).

Frequency of Response: One-time reporting requirement; On occasion reporting requirement; Third party disclosure requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 157 and 309(j) as amended; Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, §§ 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act) and the Community Broadcasters Protection Act of 1999.

Total Annual Burden: 5,981 hours.

Annual Cost Burden: \$3,949,550.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The collection is being made to the Office of Management (OMB) for the approval of information collection requirements contained in the Commission's Incentive Auction Order, FCC 14–50, which adopted rules for holding an Incentive Auction, as required by the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). The information gathered in this collection will be used allow Class A television stations to make changes in their authorized facilities. Specifically, Class A stations assigned to a new channel following the Incentive Auction must file a minor change application on FCC Form 2100, Schedule E following release of the Channel Reassignment Public Notice. Under certain circumstances, licensees of stations reassigned to a new channel within their existing band to propose transmission facilities in their construction permit applications that will extend their coverage contours. In addition, there will be a priority processing window for licensees of reassigned stations, UHF-to-VHF stations, or High-VHF-to-Low-VHF stations that, for reasons beyond their control, are unable to construct facilities that meet the technical parameters specified in the Channel Reassignment Public Notice, or the permissible contour coverage variance from those technical parameters specified in section 73.3700(b)(1)(ii) or (iii). Channel share stations file a minor change application for a construction permit for the channel on which the channel sharer operates at least sixty (60) days prior to the date by which it must terminate operations on its pre-auction channel and must include a copy of the channel sharing agreement. In addition, subject to limitations set out in the rules, a Class A licensee of a reassigned station, a UHF-to-VHF station, or a High-VHF-to-Low-VHF station may file a minor change application for a construction permit on FCC Form 2100 Schedule E during a filing window to be announced by the Media Bureau by public notice, in order to request a change in the technical parameters specified in the Channel Reassignment Public Notice with respect to height above average terrain (HAAT), effective radiated power (ERP), or transmitter location that would be considered a minor change under sections 73.3572(a)(1), (2) or 74.787(b). FCC Form 2100, Schedule E is also being modified to accommodate new channel sharing provisions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2015-28627 Filed 11-10-15; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[DA 15-1160]

Notice of Debarment; Federal Lifeline Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (Bureau) gives notice of Icon Telecom, Inc.'s (Icon) debarment from the federal Lifeline universal service support mechanism (Lifeline program) for a period of three years. During this debarment period, Icon is prohibited from participating in activities associated with or related to the Lifeline program, including the receipt of funds or discounted services through the Lifeline program, or consulting with, assisting, or advising applicants or service providers regarding the Lifeline program.

DATES: Debarment commences on the date Icon receives the debarment letter or November 12, 2015, whichever comes first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Celia Lewis, Paralegal Specialist, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4-A422, 445 12th Street SW., Washington, DC 20554. Celia Lewis may be contacted by phone at (202) 418-7456 or email at Celia.Lewis@fcc.gov. If Ms. Lewis is unavailable, you may contact Mr. Kalun Lee, Deputy Chief, Investigations and Hearings Division, by telephone at (202) 418-0796 and by email at Kalun.Lee@fcc.gov.

SUPPLEMENTARY INFORMATION: The Bureau debars Icon for a period of three years pursuant to 47 CFR 54.8 and 0.111(a)(14). Icon's conviction for making a false statement in violation of 18 U.S.C. 1002(a)(2), in connection with fraudulent claims against the Lifeline program is the basis for this debarment. Attached is the Notice of Debarment, DA 15-1160, which was mailed to Icon and released on October 13, 2015. The complete text of the Notice of Debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street SW., Room CY-A257,

Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at <http://www.fcc.gov>.

Federal Communications Commission.

Jeffrey J. Gee,

Chief, Investigations and Hearings Division, Enforcement Bureau.

October 13, 2015

DA 15-1160

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Wes Yui Chew

President

Icon Telecom, Inc.

c/o Daniel G. Webber, Jr.

Ryan Whaley Coldiron Shandy PLLC

119 N. Robinson Avenue, Suite 900

Oklahoma City, OK 73102

Re: Notice of Debarment, File No. EB-IHD-15-00019108

Dear Mr. Chew:

The Federal Communications Commission (Commission) hereby notifies Icon Telecom, Inc. (Icon) that, pursuant to section 54.8 of the Commission's rules, Icon is prohibited from participating in activities associated with or related to the federal low-income support mechanism (Lifeline program) for three years from either the date of Icon's receipt of this Notice of Debarment or of its publication in the **Federal Register**, whichever comes first (Debarment Date).¹

On May 26, 2015, the Commission's Enforcement Bureau (Bureau) sent Icon a notice of suspension and initiation of debarment proceeding (*Notice of Suspension*) that was published in the **Federal Register** on July 9, 2015.² The *Notice of Suspension* suspended Icon from participating in any activities associated with or related to the Lifeline program, including receiving funds or discounted services through the Lifeline program, or consulting with, assisting, or advising applicants or service providers regarding the Lifeline

¹ 47 CFR 54.8 (e) and (g); 47 CFR 0.111 (delegating to the Bureau authority to resolve universal service suspension and debarment proceedings). In 2007, the Commission extended the debarment rules to apply to all federal universal service support mechanisms, including the Lifeline program. See *Comprehensive Review of the Universal Service Fund Management, Administration, & Oversight*, Report and Order, 22 FCC Rcd 16372, 16410-12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending paragraphs (a)(1), (a)(5), (c), (d), (e)(2)(i), (e)(3), (e)(4), and (g)).

² Letter from Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Wes Yui Chew, President, Icon Telecom, Inc., notice of suspension and initiation of debarment proceeding, 30 FCC Rcd 4993 (Enf. Bur. 2015); 80 FR 39429-01 (July 9, 2015).

program.³ It also described the basis for initiating the debarment proceeding against Icon, the applicable debarment procedures, and the effect of debarment.

As discussed in the *Notice of Suspension*, on June 12, 2014, Icon was convicted of making a false statement in violation of 18 U.S.C. 1002(a)(2), in connection with fraudulent claims against the federal Lifeline telephone program (Lifeline program).⁴ Icon participated in the Lifeline program from July 2011 until September 2013.⁵ Specifically, Icon pled guilty to knowingly making a false statement to the Universal Service Administrative Company⁶ through its submission of 58 fabricated customer recertification forms, which included fictitious signatures, in response to an audit request.⁷ Pursuant to section 54.8(c) of the Commission's rules, Icon's conviction of criminal conduct in connection with the Lifeline program is the basis for this debarment.⁸

In accordance with the Commission's debarment rules, Icon was required to file with the Commission any opposition to the suspension or its scope, or to the proposed debarment or its scope, no later than 30 calendar days from either the date of Icon's receipt of the *Notice of Suspension* or of its publication in the **Federal Register**, whichever date occurred first.⁹ The Commission received no opposition from Icon.¹⁰

³ 47 CFR 54.8(a)(1) and (d).

⁴ Any further reference in this letter to "your conviction" refers to your guilty plea and subsequent sentencing in *United States v. Icon Telecom*, Criminal Docket No. 5:14-cr-00170-D, Plea Agreement (W.D. Okla. filed June 12, 2014) (*Plea Agreement*). See also *Lifeline & Link Up Reform & Modernization*, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*Lifeline Reform Order*).

⁵ *United States v. Icon Telecom*, Criminal Docket No. 5:14-cr-00170-D, Information at 4 (W.D. Okla. filed June 3, 2014) (*Information*).

⁶ The Universal Service Administrative Company (USAC) is an independent, not-for-profit corporation designated by the Commission as the administrator of the Lifeline program. See About USAC, <http://www.usac.org/about/>.

⁷ *Information* at 8; *Plea Agreement* at 2; see also United States Attorney's Office, Western District of Oklahoma, Press Release, *Icon Telecom and Its Owner Plead Guilty And Agree To Forfeit More Than \$27 Million In Connection With Federal Wireless Telephone Subsidy Program*, June 12, 2014, available at <http://www.justice.gov/usao-wdok/pr/icon-telecom-and-its-owner-plead-guilty-and-agree-forfeit-more-27-million-connection>.

⁸ 47 CFR 54.8(c).

⁹ *Id.* § 54.8 (e)(3) through (4). Any opposition had to be filed no later than July 15, 2015.

¹⁰ On May 27, 2015, Icon responded to the *Notice of Suspension* stating that it had relinquished its eligible telecommunications carrier (ETC) designation in September of 2013. See Email from George M. Makohin, Counsel for Icon Telecom, Inc.,

For the foregoing reasons, Icon is debarred from involvement with the Lifeline program for three years from the Debarment Date.¹¹ During this debarment period, Icon is excluded from participating in any activities associated with or related to the Lifeline program, including the receipt of funds or discounted services through the Lifeline program, or consulting with, assisting, or advising applicants or service providers regarding the Lifeline program.¹²

Sincerely yours,

Jeffrey J. Gee
Chief, Investigations and Hearings Division,
Enforcement Bureau

cc: Johnnay Schrieber, Universal Service
Administrative Company (via email)
Rashann Duvall, Universal Service
Administrative Company (via email)
Chris M. Stevens, United States Attorney's
Office, Western District of Oklahoma (via
email)
Scott E. Williams, United States Attorney's
Office, Western District of Oklahoma (via
email)

[FR Doc. 2015-28736 Filed 11-10-15; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0647]

Information Collection Approved by the Office of Management and Budget (OMB)

AGENCY: Federal Communications
Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for a revision of a currently approved public information collection pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). 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.

to Celia Lewis, Paralegal Specialist, Investigations and Hearings Division, FCC Enforcement Bureau (May 27, 2015, 16:32 EDT). Icon did not oppose its suspension from the Lifeline program or the Commission's debarment proceeding against the company. *Id.*

¹¹ 47 CFR 54.8(g).

¹² 47 CFR 54.8(a)(1), (d), and (g).

FOR FURTHER INFORMATION CONTACT:
Cathy Williams, Office of the Managing
Director, at (202) 418-2918, or email:
Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0647.
OMB Approval Date: September 25,
2015.

OMB Expiration Date: September 30,
2018.

Title: Annual Cable Price Survey and
Supplemental Questions, FCC Form
333.

Form Number: FCC Form 333.

Respondents: Business or other for-
profit entities; State, local or Tribal
Government.

*Number of Respondents and
Responses:* 776 respondents and 776
responses.

Estimated Time per Response: 7
hours.

Frequency of Response: Annual
reporting requirement.

Total Annual Burden: 5,432 hours.

Total Annual Cost: None.

Obligation to Respond: Mandatory.
The statutory authority for this
information collection is in Sections 4(i)
and 623(k) of the Communications Act
of 1934, as amended.

Nature and Extent of Confidentiality:
If individual respondents to this survey
wish to request confidential treatment of
any data provided in connection with
this survey, they can do so upon written
request, in accordance with Sections
0.457 and 0.459 of the Commission's
rules. To request confidential treatment
of their data, respondents must describe
the specific information they wish to
protect and provide an explanation of
why such confidential treatment is
appropriate. If a respondent submits a
request for confidentiality, the
Commission will review it and make a
determination.

Privacy Impact Assessment: No
impact(s).

Needs and Uses: The Cable Television
Consumer Protection and Competition
Act of 1992 ("Cable Act") requires the
Commission to publish annually a
report on average rates for basic cable
service, cable programming service, and
equipment. The report must compare
the prices charged by cable operators
subject to effective competition and
those that are not subject to effective
competition. The Annual Cable Industry
Price Survey is intended to collect the
data needed to prepare that report. The
data from these questions are needed to
complete this report.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2015-28626 Filed 11-10-15; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523-5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011539-020.

Title: HLAG/NYK/MSC Vessel
Sharing Agreement.

Parties: Companhia Libra de
Navegacao; Compania Libra de
Navegacion Uruguay S.A.; Hapag-Lloyd
AG; Nippon Yusen Kaisha; and MSC
Mediterranean Shipping Company SA.

Filing Party: Wayne R. Rohde, Esq.;
Cozen O'Connor, 1200 19th Street NW.,
Washington, DC 20036.

Synopsis: The Amendment would
delete CLNU as a party to the
agreement, and revise the Applicable
Law, Arbitration and Force Majeure
provisions of the agreement.

Agreement No.: 012369.

Title: Crowley/Zim Space Charter
Agreement.

Parties: Crowley Caribbean Services,
LLC and Zim Integrated Shipping
Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.;
Cozen O'Connor, 1200 19th Street NW.,
Washington, DC 20036.

Synopsis: The Agreement authorizes
Crowley to charter space to Zim in the
trade between Port Everglades, FL and
Kingston, Jamaica.

Agreement No.: 012370.

Title: Volkswagen Konzernlogistik
GmbH & Co. OHG/Hyundai Glovis Co.,
Ltd. Soace Charter Agreement.

Parties: Volkswagen Konzernlogistik
GmbH & Co. OHG and Hyundai Glovis
Co., Ltd.

Filing Party: Wayne R. Rohde, Esq.;
Cozen O'Connor, 1200 19th Street NW.,
Washington, DC 20036.

Synopsis: The Agreement authorizes
the parties to charter space to/from one
another in the trade between Germany
and the U.S. West Coast.

By Order of the Federal Maritime
Commission.

Dated: November 6, 2015.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2015-28738 Filed 11-10-15; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL RESERVE SYSTEM**Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB**

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Acting Clearance Officer—Nuha Elmaghribi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452-3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

Report title: Recordkeeping and Disclosure Requirements Associated with the Regulations Implementing the Fair Credit Reporting Act (Regulation V).

Agency form number: Reg V.

OMB control number: 7100-0308.

Frequency: On occasion.

Reporters: Financial institutions and consumers.

Estimated annual reporting hours: Negative information notice: 375 hours; Affiliate marketing: Notices to consumers, 25,236 hours and Consumer response, 106,833 hours; Red flags: 74,888 hours; Address discrepancies: 6,000 hours; Risk-based pricing: Notice to consumers, 90,000 hours; Furnisher duties: Policies and procedures, 60,000

hours and Notice of frivolous disputes to consumers, 142,792 hours.

Estimated average hours per response: Negative information notice: 15 minutes; Affiliate marketing: Notices to consumers, 18 hours and Consumer response, 5 minutes; Red flags: 37 hours; Address discrepancies: 4 hours; Risk-based pricing: Notice to consumers, 5 hours; Furnisher duties: Policies and procedures, 40 hours and Notice of frivolous disputes to consumers, 14 minutes.

Number of respondents: Negative information notice: 1,500 financial institutions; Affiliate marketing: Notices to consumers, 1,402 financial institutions and 1,282,000 Consumer response; Red flags: 2,024 financial institutions; Address discrepancies: 1,500 financial institutions; Risk-based pricing: Notice to consumers, 1,500 financial institutions; Furnisher duties: Policies and procedures, 1,500 financial institutions and 611,966, Notice of frivolous disputes to consumers.

General description of report: This information collection is mandatory pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5519) and the Fair Credit Reporting Act (FCRA) (15 U.S.C. 1681m, 1681w, and 1681s). Because the notices and disclosures required are not provided to the Federal Reserve, and all records thereof are maintained at state member banks, no issue of confidentiality arises under the Freedom of Information Act.

Abstract: The FCRA was enacted in 1970 based on a Congressional finding that the banking system is dependent on fair and accurate credit reporting.¹ The FCRA was enacted to ensure consumer reporting agencies exercise their responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy. The FCRA requires consumer reporting agencies to adopt reasonable procedures that are fair and equitable to the consumer with regard to the confidentiality, accuracy, relevancy, and proper utilization of consumer information.

Congress substantially amended the FCRA upon the passage of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).² The FACT Act created many new responsibilities for consumer reporting agencies and users of consumer reports. It contained many new consumer disclosure requirements, as well as provisions to address identity

¹ The FCRA is one part of the Consumer Credit Protection Act which also includes the Truth in Lending Act, Equal Credit Opportunity Act, and Fair Debt Collection Practices Act. 15 U.S.C. 1601 *et seq.*

² Public Law 108-159, 117 Stat. 1952.

theft. In addition, the FACT Act provided consumers with the right to obtain a copy of their consumer report annually without cost. Improving consumers' access to their credit report is intended to help increase the accuracy of data in the consumer reporting system.

Since 2011, the Consumer Financial Protection Bureau has been responsible for issuing most FCRA regulations. The Federal Reserve retained rule-writing authority for certain provisions of the FCRA applicable to motor vehicle dealers and provisions of the FCRA that require identity theft prevention programs, regulate the disposal of consumer information, and require card issuers to validate consumers' notifications of changes of address.

Current Actions: On August 11, 2015, the Federal Reserve published a notice in the **Federal Register** (80 FR 48104) requesting public comment for 60 days on the extension, without revision, of the Recordkeeping and Disclosure Requirements Associated with the Regulations Implementing the Fair Credit Reporting Act (Regulation V). The comment period for this notice expired on October 13, 2015. The Federal Reserve did not receive any comments. The information collection will be extended for three years, without revision, as proposed.

Board of Governors of the Federal Reserve System, November 5, 2015.

Robert deV. Frierson,
Secretary of the Board.

[FR Doc. 2015-28653 Filed 11-10-15; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM**Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies; Correction**

This notice corrects a notice (FR Doc. 2015-28261) published on page 68540 of the issue for Thursday, November 5, 2015.

Under the Federal Reserve Bank of Atlanta, the entry for Oculina Banc Corp, Vero Beach, Florida, is revised to read as follows:

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Oculina Banc Corp*, Vero Beach, Florida; proposes to merge with its parent company, Colonial Banc Corp, Vero Beach, Florida. *Oculina Banc Corp* will survive the merger. Colonial Banc Corp and *Oculina Banc Corp* control *Oculina Bank*, Fort Pierce, Florida.

Comments on this application must be received by November 30, 2015.

Board of Governors of the Federal Reserve System, November 6, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015-28721 Filed 11-10-15; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 27, 2015.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *AB Anderson Family Trust, Oneida, Illinois, and John W. Anderson, Galesburg, Illinois, individually and as trustee of the AB Anderson Family Trust, together as a group acting in concert with Ann Mustard, Dulles, Virginia, and B. Susan Hill, Galesburg, Illinois;* to retain voting shares of Anderson Bancorp, Inc., and indirectly retain voting shares of Anderson State Bank, both in Oneida, Illinois.

Board of Governors of the Federal Reserve System, November 6, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015-28720 Filed 11-10-15; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part

225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 2015.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Ameris Bancorp*, Moultrie, Georgia; to merge with Jacksonville Bancorp, Inc., and thereby indirectly acquire The Jacksonville Bank, both of Jacksonville, Florida.

Board of Governors of the Federal Reserve System, November 6, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015-28719 Filed 11-10-15; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and

loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 2015.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210-2204:

1. *Radius Investment Corp., and Radius Merger Sub, Inc.*, both in Boston, Massachusetts; to become savings and loan holding companies by acquiring Radius Bancorp, Inc., and thereby indirectly acquiring Radius Bank, both in Boston, Massachusetts.

Board of Governors of the Federal Reserve System, November 6, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015-28722 Filed 11-10-15; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Senior Executive Service Performance Review Board

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance Review Boards for the Federal Retirement Thrift Investment Board. The purpose of the Performance Review Boards is to make written recommendations on annual summary ratings and awards to the appointing authorities on the performance of senior executives.

DATES: This notice is effective November 6, 2015.

FOR FURTHER INFORMATION CONTACT: Kelly Powell, HR Specialist, at 202–942–1681.

SUPPLEMENTARY INFORMATION: Title 5, U.S. Code, 4314(c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before Board service commences. The following persons will serve on the Federal Retirement Thrift Investment Board's Performance Review Boards which will review initial summary ratings to ensure the ratings are consistent with established performance requirements, reflect meaningful distinctions among senior executives based on their relative performance and organizational results and provide recommendations for ratings, awards, and pay adjustments in a fair and equitable manner: James Petrick, Renee Wilder, and Karen Vaughn Peck.

Megan Grumbine,

Deputy General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2015–28735 Filed 11–10–15; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension State Plan for Independent Living (SPIL) Public Law (105–220) for the State Independent Living (SILS) and Centers for Independent Living (CIL) Program Authorized by Title VII, Chapter 1, of the, as Amended by the Workforce Innovation and Opportunity Act (WIOA, Pub. L. 113–128) [Rehabilitation Act]

AGENCY: Center for Independent Living Administration, Administration for Community Living (ACL), HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL), Independent Living Administration is announcing an opportunity for public comment on the proposed collection of certain information. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements

relating to the State Plan for Independent Living (SPIL).

DATES: Submit written or electronic comments on the collection of information by January 11, 2016.

ADDRESSES: Submit electronic comments on the collection of information to: *veronica.hogan@acl.hhs.gov*. Submit written comments on the collection of information to Administration for Community, Independent Living Administration, 550 12th Street Southwest, PCP Building, Room 5044, Washington, DC 20202, attention Veronica Hogan.

FOR FURTHER INFORMATION CONTACT: Veronica Hogan, Grant Management Specialist, (202) 245–7378 or by email *veronica.hogan@acl.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request 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, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL/ILA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, ACL/ILA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of ACL/ILA's functions, including whether the information will have practical utility; (2) the accuracy of ACL/ILA estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The Independent Living Program is required by federal statute and regulation requires the collection of this information every three years. The three-year period for the next SPIL is FY 2018–2020. The SPIL provided in

writing to the Administration for Community Living, Administration on Disabilities, Independent Living Administration. The five core services are: Advocacy, information and referral, independent living skills training, peer counseling, and transition services. WIOA included three prongs to the 5th core service:

- Facilitating the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences, with the requisite supports and services;
- Provide assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals may remain in the community, and
- Facilitate the transition of youth who are individuals with significant disabilities, who were eligible for individualized education programs under section 614(d) of the Individuals with Disabilities Act (20 U.S.C. 1414(d)), and who have completed their secondary education or otherwise left school, to postsecondary life.

ACL estimates the burden of this collection of information as follows: 56 SPIL respond annually which should be an average burden of 60 hours for each grantee. The aggregate hour burden for all grantees is an estimated 3,360 hours (56 grantees × 60 hours each). These estimated hours include the time required for reading, studying and planning for the new SPIL; conducting required public hearings; gathering and reviewing pertinent information; completing the SPIL assurances and narrative sections; reviewing draft and final versions of the completed SPIL; and submission of the final SPIL to ACL.

Dated: November 5, 2015.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2015–28745 Filed 11–10–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; Semi-Annual and Final Reporting Requirements for Discretionary Grant Programs

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the continuation of an existing collection for Performance Progress Reports previously approved for discretionary grants funded by the U.S. Administration for Community Living (ACL).

DATES: Submit written or electronic comments on the collection of information by January 11, 2016.

ADDRESSES: Submit electronic comments on the collection of information to: lori.stalbaum@acl.hhs.gov. Submit written comments on the collection of information to Lori Stalbaum, Administration on Community Living, Washington, DC 20201 or by fax to Lori Stalbaum at 202-357-3469.

FOR FURTHER INFORMATION CONTACT: Lori Stalbaum at 202-357-3452 or lori.stalbaum@acl.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request 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, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, ACL invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility; (2) the accuracy of ACL's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The Administration for Community Living (ACL) plans to continue an existing approved collection of information for semi-annual and final reports pursuant to the requirements of its discretionary grant programs. Through its discretionary grant programs, ACL supports projects for the purpose of developing and testing new knowledge and program innovations with the potential for contributing to the independence, well-being, and health of older adults, people with disabilities across the lifespan, and their families and caregivers. Deliverables required by ACL of all grantees are semi-annual and final reports, as provided for in the Department of Health and Human Services regulations, 45 CFR part 74, Section 74.51. These grantee performance reporting requirements can be found on AoA's Web site at http://www.acl.gov/Funding_Opportunities/Grantee_Info/Reporting.aspx. ACL estimates the burden of this collection of information as follows: *Frequency:* Semi-annually with the Final report taking the place of the semi-annual report at the end of the final year of the grant. *Respondents:* States, public agencies, private nonprofit agencies, institutions of higher education, and organizations including tribal organizations. *Estimated Number of Responses:* 600. *Total Estimated Burden Hours:* 12,000.

Dated: November 5, 2015.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2015-28744 Filed 11-10-15; 8:45 am]

BILLING CODE 4154-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2015-N-0001]

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 14, 2015, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993-0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>.

Contact Person: Stephanie L. Begansky, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, (301) 796-9001, FAX: (301) 847-8533, EMDAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at <http://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss the results of the IMPROVED Reduction of Outcomes: Vytorin Efficacy International Trial (IMPROVE-IT). IMPROVE-IT was a clinical trial that studied the effect of ezetimibe/simvastatin compared with simvastatin on the occurrence of cardiovascular events in patients with recent acute coronary syndrome. The results from this trial have been submitted to support supplemental new drug applications 21445/S-038 and 21687/S-054, ZETIA (ezetimibe) and VYTORIN (ezetimibe/simvastatin) tablets, respectively, by MSD International GmbH. The proposed indication for ZETIA (in combination with a statin) and VYTORIN is to reduce

the risk of cardiovascular events in patients with coronary heart disease.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 30, 2015. Oral presentations from the public will be scheduled between approximately 12:45 p.m. and 1:45 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 19, 2015. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 20, 2015.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Stephanie L. Begansky at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 2, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015-28672 Filed 11-10-15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Short-term Research Education to Increase Diversity.

Date: December 7, 2015.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Suite 7189, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Stephanie L Constant, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301-443-8784, constantsl@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 5, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-28650 Filed 11-10-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI T32 Institutional Training Grants.

Date: December 10, 2015.

Time: 9:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Suite 7189, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Stephanie L. Constant, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301-443-8784, constantsl@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 5, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-28661 Filed 11-10-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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: Center for Scientific Review Special Emphasis Panel Myalgic Encephalomyelitis/Chronic Fatigue Syndrome.

Date: December 2, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Contact Person: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: M. Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301-435-1766, bennettc3@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA Panel: Animal/Biological Resource Facilities.

Date: December 2, 2015.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455-1761, kellya2@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel Program Project: Early-life Exposures and Development.

Date: December 4–8, 2015.

Time: 11:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455-1761, kellya2@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Bioengineering Sciences Biocomputational and Modeling 4.

Date: December 4, 2015.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph Thomas Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301-408-9694, peteronjt@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Cell Biology.

Date: December 7, 2015.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Agenda: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Janet M Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7840, Bethesda, MD 20892, 301-806-2765, larkinja@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 5, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-28655 Filed 11-10-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102-3.65(a), notice is hereby given that the Charter for the National Cancer Institute Board of Scientific Advisors was renewed for an additional two-year period on October 8, 2015.

It is determined that the National Cancer Institute Board of Scientific Advisors is in the public interest in connection with the performance of duties imposed on the National Cancer Institute and National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Jennifer Spaeth, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496-2123, or spaethj@od.nih.gov.

Dated: November 3, 2015.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-28592 Filed 11-10-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel—R13 Conference Grant Application Review.

Date: December 9, 2015.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 7178, 6701 Rockledge Drive, Bethesda, MD 20892 (Internet Assisted Meeting/ Teleconference).

Contact Person: William J. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892-7924, 301-435-0725, johnsonwj@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 5, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-28659 Filed 11-10-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group, Heart, Lung, and Blood Program Project Review Committee.

Date: December 4, 2015.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey H Hurst, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892, 301-435-0303, hurstj@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 5, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-28660 Filed 11-10-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Translational Programs in Lung Diseases.

Date: November 23, 2015.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: William J Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892, 301-435-0725, johnsonwj@nhlbi.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 5, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-28652 Filed 11-10-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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 Heart, Lung, and Blood Institute Special Emphasis Panel, NHLBI Vascular Innovations 2.

Date: December 7-8, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Charles Joyce, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892-7924, 301-435-0288, cjoyce@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 5, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-28656 Filed 11-10-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 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 Heart, Lung, and Blood Institute Special Emphasis Panel NHLBI CLTR SEP Review.

Date: December 1, 2015.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Chang Sook Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892-7924, 301-435-0287, carolko@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 5, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-28658 Filed 11-10-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Institutional Training Mechanism Review Committee.

Date: December 11, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Charles Joyce, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892-7924, 301-435-0288, cjoyce@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 5, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-28657 Filed 11-10-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Program Project Special Emphasis Panel.

Date: November 30, 2015.

Time: 8:00 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shelley S. Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892-7924, 301-435-0303, ssehnert@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 5, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-28651 Filed 11-10-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Support for the National

Institute of Environmental Health Sciences Epidemiology.

Date: December 3-4, 2015.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Garden Inn Durham Southpoint 7007 Fayetteville Road, Durham, NC 27713.

Contact Person: RoseAnne M. McGee, Associate Scientific Review Officer Scientific Review Branch, Division of Extramural Research and Training Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-30 Research Triangle Park, NC 27709 (919) 541-0752 mcgee1@niehs.nih.gov.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of Conferences with an Environmental Health Sciences Focus
Date: December 7, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Keystone Building Suite 3118, 530 Davis Drive Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Sally Eckert-Tilotta, Ph.D., Scientific Review Administrator, Nat. Institute of Environmental Health Sciences Office of Program Operations, Scientific Review Branch, P.O. Box 12233 MD EC-30 Research Triangle Park, NC 27709 (919) 541-1446 eckertt1@niehs.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: November 5, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-28654 Filed 11-10-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2015-0070]

Infrastructure Protection Gateway Facility Surveys

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-day notice and request for comments; Existing collection in use without an OMB Control Number: 1670—NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and

Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Information Collection Division (IICD), Infrastructure Protection Gateway Program will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until January 11, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/IP/IICD, 245 Murray Lane SW., Mail Stop 0602, Arlington, VA 20598–0602. Emailed requests should go to Kimberly Sass, *Kimberly.Sass@hq.dhs.gov*. Written comments should reach the contact person listed no later than January 11, 2016. Comments must be identified by “DHS–2015–0070” and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.

- *Email:* Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words “Department of Homeland Security” and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

SUPPLEMENTARY INFORMATION: Under the direction of Homeland Security Presidential Directive-7 (HSPD–7) (2003), DHS/NPPD/IP has developed the IP Gateway—a centrally managed repository of infrastructure capabilities allowing the Critical Infrastructure (CI) community to work in conjunction with each other toward the same goals. This collection involves the standardized recording, via a series of web-based forms, of a significant amount of information assembled during voluntary physical facility review surveys. The survey is used to analyze risks and vulnerabilities to a facility and how they can mitigate risks and vulnerabilities. Questions focus on whether specific sets of controls and operational best practices are planned, defined, implemented, measured, managed, and assessed on a regular basis across all aspects of facility use and operation. Surveys are usually completed by government personnel, but can be performed by individual site owners as well. OMB is particularly interested in comments that:

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.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Information Collection Division, Infrastructure Protection Gateway Program.

Title: Infrastructure Protection (IP) Gateway Facility Surveys.

OMB Number: 1670—NEW.

Frequency: Annually, quarterly, and monthly.

Affected Public: Chief Information Officers, Chief Information Security Officers, Chief Technology Officers, and Federal and State, Local, Tribal and Territorial communities involved in the protection of CI.

Number of Respondents: 2,915 respondents (estimate).

Estimated Time per Respondent: 7.5 hours.

Total Burden Hours: 21,863 annual burden hours.

Total Burden Cost (capital/startup): \$0.

Total Recordkeeping Burden: \$0.

Total Burden Cost (operating/maintaining): \$1,168,795.98 (estimate).

Dated: October 30, 2015.

Scott Libby,

Deputy Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2015–28679 Filed 11–10–15; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–NEW]

Agency Information Collection Activities: AABB Accredited Laboratory Testing; Rapid DNA Prototype Accelerated Nuclear DNA Equipment (ANDE) by NetBio; Rapid DNA Prototype RapidHIT200 by IntegenX; Form G–1294, DNA Collection Consent Form (Laboratory Test) and Form G–1295, DNA Collection Consent Form (Rapid Test); New Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on July 8, 2014, at 79 FR 38558, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 14, 2015. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov*. Comments may also be submitted via fax at (202) 395–5806 (This is not a toll-free number). All submissions received must include the agency name and the OMB Control Number 1615–NEW.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura

Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS–2014–0002 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of This Information Collection

(1) *Type of Information Collection Request:* New Collection.

(2) *Title of the Form/Collection:* AABB accredited laboratory testing; Rapid DNA prototype Accelerated Nuclear DNA Equipment (ANDE) by NetBio; Rapid DNA prototype RapidHIT200 by IntegenX.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1294, G–1295; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Individuals or households. Overseas applicants for refugee status filing through the USCIS Form I–590 (OMB Control Number 1615–0068) that have a spouse and/or child(ren) must meet all requirements of Immigration and Nationality Act § 207(c)(2) and have the necessary burden of proof to establish the relationship(s). In the case of a parent-child relationship, there is often a degree of difficulty in establishing this for refugee populations that often lack reliable documentation. USCIS is seeking to allow I–590 applicants to provide DNA testing results through an AABB accredited laboratory, and in coordination with the USCIS overseas office, to provide effective and credible evidence of this parent-child relationship. USCIS is also seeking to conduct simultaneous Rapid DNA testing as a pilot to make a determination if the Rapid DNA machines provide a valid alternative to traditional DNA testing. USCIS will be collecting samples for traditional DNA testing through an AABB accredited laboratory in conjunction with the Rapid DNA pilot to test the validity of the results obtained during the pilot. The collection of DNA, regardless of process employed, is strictly voluntary and refusal to provide a sample does not adversely impact an applicant's I–590 application.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 60 respondents for the Applicant Initiated AABB accredited lab DNA Testing with an estimate hour burden of 6 hours per response. 250 respondents for the standard DNA process (form G–1294) with an estimate of .217 hour burden per response. 250 respondents for the Rapid DNA process (Form G–1295) with an estimate of .217 hour burden per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated hour burden per response is 470 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The total estimated cost to the public is \$14,700.

Dated: November 5, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015–28701 Filed 11–10–15; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2015–N194;
FXES1113020000–167–FF02ENEH00]

Draft Screening Form and Draft Low-Effect Habitat Conservation Plan for the San Rafael Ranch; Santa Cruz County, AZ

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), make available the draft National Environmental Policy Act (NEPA) screening form and draft San Rafael Ranch low-effect habitat conservation plan (dHCP). The San Rafael Cattle Company (applicant) has applied to the Service for an incidental take permit (ITP, TE12133A–0) under the Endangered Species Act of 1973, as amended (Act). If approved, the ITP would be in force for a period of 30 years, and would authorize incidental take of three species currently listed under the Act, and one species that may become listed under the Act. The proposed incidental take would occur as a result of specified actions conducted under the authority of the San Rafael Cattle Company.

This is the second notice regarding the dHCP. An earlier notice of Availability was published on July 22, 2010 (75 FR 35504). After that notice was published, processing of the permit application was suspended by mutual agreement of the San Rafael Cattle Company and the Service.

DATES: To ensure consideration, written comments must be received or postmarked on or before December 14, 2015. Any comments that we receive after the closing date may not be considered.

ADDRESSES: *Availability of Documents:* The draft NEPA screening form and draft San Rafael Ranch low-effect habitat conservation plan (dHCP) are available by the following methods:

- *Internet:* Documents are available on the Internet at the Service's Web site, at <http://www.fws.gov/southwest/es/arizona/>.

- *U.S. Mail:* A limited number of CD-ROM and printed copies of both documents are available, by request, from Mr. Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951; telephone: 602–242–0210; fax:

602-242-2513. Please note that your request is in reference to the San Rafael Ranch dHCP (TE-12133A-0).

- *In-Person:* Copies of both documents are also available for public inspection and review at the following locations, by written request and appointment only, 8 a.m. to 4:30 p.m.:

- U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 6034, Albuquerque, NM 87102.

- U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021-4951; telephone: 602-242-0210; fax: 602-242-2513.

The ITP application is available by mail from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103, Attn: Environmental Review Division.

Comment submission: We request that you send comments only by one of the methods described below. Comments submitted by any other means may not be considered. Please note that your request is in reference to the San Rafael Ranch dHCP (TE-12133A-0).

- *Electronically:* Send comments to fw2_hcp_permits@fws.gov.

- *By hard copy:* Submit comments by U.S. mail or hand-delivery to: U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021-4951; telephone: 602-242-0210.

FOR FURTHER INFORMATION CONTACT:

Doug Duncan, Arizona Ecological Services Field Office—Tucson Sub-Office, 201 N. Bonita Avenue, Suite 141, Tucson, AZ 85745; telephone (520/670-6150; extension 236); or by email (Doug_Duncan@fws.gov).

SUPPLEMENTARY INFORMATION: We announce that:

(1) We have gathered the information necessary to determine the impacts to the human environment under NEPA related to the potential issuance of an ITP to the applicant; and

(2) The applicant has developed a dHCP as part of the application for an ITP, which describes the measures the applicant has agreed to take to minimize and mitigate the effects of incidental take of covered species to the maximum extent practicable, pursuant to section 10(a)(1)(B) of the Act.

Take of listed plant species is not defined in the Act, although the Act does identify several prohibitions. However, because covered species in the dHCP include both plants and animals, in the following discussion we use the term “incidental take” when discussing impacts to covered plants, as

well as actual incidental take of covered animals. Plant species may be included on an ITP in recognition of the conservation benefits provided to them under an HCP.

If approved, the ITP would authorize incidental take of five listed species, including Sonoran tiger salamander (*Ambystoma mavortium [=tigrinum] stebbinsi*), Gila chub (*Gila intermedia*), northern Mexican gartersnake (*Thamnophis eques megalops*), Canelo Hills ladies'-tresses (*Spiranthes delitescens*), and Huachuca water umbel (*Lilaeopsis schaffneriana ssp. recurva*), as well as a species that may become listed under the Act in the future, and Huachuca springsnail (*Pyrgulopsis thompsoni*).

Also occurring on the Ranch is the endangered Gila topminnow (*Poeciliopsis o. occidentalis*) and potentially, the threatened Chiricahua leopard frog (*Lithobates chiricahuensis*). Both species are covered under safe harbor agreements held by the Arizona Game and Fish Department.

The proposed incidental take would occur as a result of ranch management activities on 18,440 acres of the San Rafael Ranch and 3,560 acres of grazing preference on the Arizona State Parks, San Rafael State Natural Area (consistent with lease terms) in Santa Cruz County, Arizona. The applicant has completed a dHCP as part of the application package, as required by the Act.

A categorical exclusion for an HCP is based on the following three criteria: (1) Implementation of the proposed plan would result in minor or negligible effects on federally-listed, proposed, and candidate species and their habitats; (2) implementation of the proposed HCP would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. Based upon the preliminary determination made in our draft NEPA screening document, we believe this action qualifies as a categorical exclusion. We will consider public comments when making the final determination on whether to prepare an additional NEPA document on the proposed action.

Background

Since purchasing the San Rafael Ranch in 2000, the applicant has been implementing grazing practices that

have improved range and habitat conditions on private lands within the San Rafael Valley of Santa Cruz County, Arizona. These improved habitat conditions provide opportunities for conservation actions that may enhance the status and distribution of covered species on the San Rafael Ranch. The applicant would like to continue ranch management activities while working with agencies to conduct conservation actions on the San Rafael Ranch, such as introduction of covered species or other species not covered, and removal of aquatic invasive species. The covered ranch management activities would consist of watering cattle in stock tanks and cattle grazing all habitats, including herding cattle within and between pastures; maintenance of stock ponds, wells, waterlines, fences, roads, and utility lines supporting these facilities; and brush and invasive plant management to reduce shrub invasion of upland grasslands. All of these activities have short-term impacts on species and their habitats, and incidental take of some covered species may occur. However, a long-term benefit is anticipated for the watershed and habitats of the covered species. In addition, the applicant proposes actions to minimize the impacts of the activities and assist in recovery of covered species. These actions are also proposed to be covered by the associated section 10(a)(1)(B) permit.

The biological goal of the San Rafael Ranch HCP is to provide long-term protection for multiple species of concern and key natural communities through maintenance or improvement of the habitat conditions and ecosystem functions necessary for their survival, and to ensure that any incidental take of listed species will not appreciably reduce the likelihood of the survival and recovery of those species in the wild.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: November 5, 2015.

Joy E. Nicholopoulos,

*Acting Regional Director, Southwest Region,
U.S. Fish and Wildlife Service.*

[FR Doc. 2015-28794 Filed 11-10-15; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR**Geological Survey**

[GX16EE000101100]

Announcement of National Geospatial Advisory Committee Meeting

AGENCY: U.S. Geological Survey,
Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The National Geospatial Advisory Committee (NGAC) will meet on December 4, 2015, from 12:30 p.m. to 3:30 p.m. EST. The meeting will be held via web conference and teleconference.

The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, has been established to advise the Chair of the Federal Geographic Data Committee on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget (OMB) Circular A-16. Topics to be addressed at the meeting include:

- FGDC Update
- NGAC Subcommittee Reports
- Review of NGAC Papers
- Planning for 2016 NGAC Activities

Members of the public who wish to attend the meeting must register in advance. Please register by contacting Lucia Foulkes at the Federal Geographic Data Committee (703-648-4142, lfoulkes@usgs.gov). Meeting registrations are due by November 30, 2015. Meeting information (Web conference and teleconference instructions) will be provided to registrants prior to the meeting. While the meeting will be open to the public, attendance may be limited due to web conference and teleconference capacity.

The meeting will include an opportunity for public comment. Attendees wishing to provide public comment should register by November

30. Please register by contacting Lucia Foulkes at the Federal Geographic Data Committee (703-648-4142, lfoulkes@usgs.gov). Comments may also be submitted to the NGAC in writing.

DATES: The meeting will be held on December 4, 2015, from 12:30 p.m. to 3:30 p.m. EST.

FOR FURTHER INFORMATION CONTACT: John Mahoney, U.S. Geological Survey (206-220-4621).

SUPPLEMENTARY INFORMATION: Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting are available at www.fgdc.gov/ngac.

Kenneth Shaffer,

*Deputy Executive Director, Federal
Geographic Data Committee.*

[FR Doc. 2015-28730 Filed 11-10-15; 8:45 am]

BILLING CODE 4338-11-P

DEPARTMENT OF JUSTICE**Drug Enforcement Administration**

[Docket No. 15-21;

Christina B. Paylan, M.D.; Decision and Order

On July 1, 2015, Administrative Law Judge Christopher B. McNeil issued the attached Recommended Decision. Therein, the ALJ found it undisputed that Respondent's medical license has been suspended by the Florida Department of Health, and that therefore, she "is not authorized to handle controlled substances in the State of Florida." R.D. 6. Because Respondent is no longer a "practitioner" within the meaning of the Controlled Substances Act, the ALJ granted the Government's Motion for Summary Disposition and recommended that her registration be revoked¹ and that any pending application to renew or modify her registration be denied. *Id.*

Respondent filed Exceptions to the Decision and the Government filed a Response to Respondent's Exceptions. Thereafter, the record was forwarded to me for final agency action.

Having considered the record in its entirety, I have decided to adopt the ALJ's factual finding, his conclusions of law, and recommended order. A discussion of Respondent's Exceptions follows.

Respondent's first exception is based on the ALJ's finding that she is "no

¹ According to the registration records of this Agency, of which I take official notice, *see* 5 U.S.C. 556(e), Respondent's registration does not expire until March 31, 2016.

longer authorized by state law to handle controlled substances." Exceptions at 1. Noting that the language of section 824(a)(3) authorizes the suspension or revocation of a registration where a registrant "is no longer authorized by State law to engage in the manufacturing, distribution or dispensing of controlled substances," Respondent argues that the ALJ lumped together "[t]he words 'manufacturing, distribution or dispensing'" and that this "violates the strict requirement for strict statutory construction." *Id.* Apparently, because the ALJ used the word "handle" rather than "dispense" to describe the authority Respondent no longer holds by virtue of the suspension of her medical license, Respondent believes that the Agency lacks authority to revoke her registration.

It is true that the Controlled Substances Act does not use the word "handle" in describing the activities that various categories of registrants are authorized to engage in pursuant to their registrations. Rather, the term is part of the Agency's vernacular.

Notwithstanding the language used by the ALJ, the Agency possesses authority to revoke Respondent's registration because the record establishes that she lacks authority to dispense controlled substances in Florida, the State in which she is registered with DEA. Specifically, the evidence shows that on October 28, 2014, the Florida Department of Health ordered the emergency suspension of Respondent's license "to practice as a medical doctor" after she was convicted in state court of two felony offenses, including, *inter alia*, "obtaining a controlled substance by fraud." *In re Emergency Suspension of the License of Christina B. Paylan, M.D.*, 1-2 (Fla. Dept. of Health Oct. 28, 2014) (No. 2014-12284). Respondent therefore lacks authority under Florida law to dispense controlled substances within the meaning of the CSA. *See* Fla. Stat. § 458.305(3) (defining the "practice of medicine" as "the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition"); *id.* § 458.305(4) (defining "physician" as "a person who is licensed to practice medicine in this state"); § 456.065(2)(d)(1) (prohibiting the unlicensed practice of "a health care profession without an active, valid . . . license to practice that professional" which "includes practicing on a suspended . . . license").

Respondent further argues that because she "is not a dispensing practitioner" as defined by Florida law, she is outside of the scope of section 824(a)(3). Exceptions at 5. Respondent

explains that under Florida law and regulation, a dispensing practitioner “is one who acts as a pharmacy and sells medications . . . to patients” and that she “is not registered as a dispensing practitioner . . . because she does not sell medications to patients out of her office.” *Id.*

Be that as it may, the CSA defines “[t]he term ‘dispense’ [to] mean[] to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, a practitioner, including the *prescribing* and *administering* of a controlled substance.” 21 U.S.C. 802(10) (emphasis added). Because the term “dispense” is not limited to direct dispensing but includes prescribing and administering, section 824(a)(3) authorizes the revocation of her registration based on her lack of authority under Florida law to practice medicine.²

Respondent also argues that revoking her registration would be arbitrary and capricious because the ALJ ignored relevant evidence. Exceptions at 4. According to Respondent, the relevant evidence is that in her criminal case (which was the basis of the State Board’s action), she “was not tried as a doctor, but rather as a layperson” and that “[t]he only fraud” proved by the State was that she “did not receive permission from CM in order to write a prescription to order drugs for an upcoming surgical procedure.” *Id.*; see also *id.* at 5–6 (arguing that state prosecutor committed “prosecutorial misconduct” in her criminal trial when he/she “argued that a doctor is not a doctor”).

The ALJ properly rejected this argument as it is a collateral attack on her state court conviction and the State Board’s suspension order which cannot be litigated in a proceeding brought under section 304 of the CSA. See *Kamal Tiwari*, 76 FR 71604, 71606 (2011) (citing cases); see also R.D. at 4

² Respondent also disputes whether she “is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” Exceptions at 2. Respondent argues that “[t]here is no language in the Emergency Suspension Order issued by the Florida Board of Medicine or any other evidence . . . that [she] is ‘no longer authorized by state law to handle controlled substances.’” *Id.* She further argues that she still has her medical license. *Id.* at 2–3.

While Respondent may still hold a medical license, it is undisputed that the Board of Medicine has suspended it. Accordingly, she is no longer authorized to practice medicine and prescribe controlled substances. While Respondent further asserts that the Board has yet to provide her with “a full hearing,” *id.* at 3, the ALJ properly rejected this contention. See R.D. at n.13 (citing cases holding that revocation is warranted even where a practitioner’s state authority has been summarily suspended and the State has yet to provide a hearing).

n.8 (citing cases). Rather, her challenges to either her conviction or the suspension order must be litigated in the forums provided by the State. *Tiwari*, 76 FR at 71606. Moreover, the only evidence that is relevant in determining whether Respondent’s registration should be revoked is whether she “is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” 21 U.S.C. 824(a)(3). Because it undisputed that Respondent is no longer authorized under Florida law to dispense controlled substances, she no longer meets the statutory definition of a practitioner. See *id.* § 802(21) (“The term ‘practitioner’ means a physician . . . or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which [s]he practices . . . to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice”); *id.* § 823(f) (“The Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which [s]he practices”). Accordingly, I adopt the ALJ’s recommended order and will revoke Respondent’s registration and deny any pending applications to renew or modify her registration.³

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a)(3) and 823(f), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BP7179496, issued to Christina Paylan, M.D., be, and it hereby is, revoked. I further order that any pending application of Christina Paylan, M.D., to renew or modify DEA Certificate of Registration BP7179496, be, and it hereby is, denied. This order is effective December 14, 2015.

Dated: November 2, 2015.

Chuck Rosenberg,
Acting Administrator.

Brian Bayly, Esq., for the Government.
Christina M. Paylan, pro se, for the Respondent.

³ Respondent also argues that I should issue a writ of error *coram nobis* to correct the error committed by the state court when it allowed the prosecutor to present her to the jury “as a layperson, [and] not as a doctor.” Exceptions at 7. This, however, is just another variation of her collateral attack on the state court proceeding, and in any event, Congress has not granted such authority to DEA.

ORDER GRANTING THE GOVERNMENT’S MOTION FOR SUMMARY DISPOSITION AND FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED DECISION OF THE ADMINISTRATIVE LAW JUDGE

Christopher B. McNeil, Administrative Law Judge. On April 29, 2015, the Deputy Assistant Administrator of the Drug Enforcement Administration issued an Order to Show Cause as to why the DEA should not revoke DEA Certificate of Registration (COR) Number BP7179496 issued to Christina Paylan, M.D., the Respondent in this matter. The Order seeks to revoke Respondent’s registration pursuant to 21 U.S.C. §§ 824(a)(3) and 823(f)(4), and to deny any pending applications for renewal or modification of such registration, and deny any applications for any new DEA registrations pursuant to 21 U.S.C. § 823(f). As grounds for revocation, the Deputy Assistant Administrator alleges that Respondent is without authority to handle controlled substances in Florida, the state in which Dr. Paylan is registered with the DEA. As further grounds for revocation, the Deputy Assistant Administrator alleges that Dr. Paylan has been convicted of felonies related to controlled substances and that her continued registration is inconsistent with the public interest.

On May 8, 2015, the DEA’s Office of Administrative Law Judges received a notice that Dr. Paylan was served with the Order to Show Cause on May 6, 2015.

On May 28, 2015, the DEA’s Office of Administrative Law Judges received Respondent’s written request for a hearing, dated May 28, 2015.

Thereafter, on June 1, 2015, this Office issued an Order for Briefing on Allegations Concerning Respondent’s Lack of State Authority. In the Order, I required the Government to submit evidence and arguments to support the allegation that Respondent lacks state authority to handle controlled substances and, if appropriate, file a motion for summary disposition no later than 2:00 p.m. Eastern Daylight Time (EDT) on June 15, 2015. Also in my June 1, 2015 Order, I allowed the Respondent to file a response to the Government’s motion for summary disposition no later than 2:00 p.m. EDT on June 29, 2015.

On June 3, 2015, the Government timely filed its Motion for Summary Disposition, along with its Brief in Support of the Order to Show Cause Allegation That Respondent Lacks State Authority to Handle Controlled Substances. In its filings, the

Government averred that on October 28, 2014, the State of Florida Department of Health issued an Order of Emergency Suspension of License (Suspension Order) of Dr. Paylan's medical license.⁴ Based on this event, the Government argues that under applicable DEA precedent Respondent's DEA COR should be revoked.

On June 29, 2015, the Respondent timely filed her response, entitled Affidavit of Christina Paylan, MD in Support of Her Response to the Government's Summary Disposition (Response). Dr. Paylan attached to her Response a 187-page brief (Brief) that included exhibits in support of her position. In her Brief, Dr. Paylan relies upon three legal arguments. First, Dr. Paylan argues that collateral estoppel/*res judicata* is applicable to this proceeding. Next, Dr. Paylan avers that she received ineffective assistance from counsel in her criminal trial which formed the basis of the State Medical Board's emergency order suspending Dr. Paylan's license to practice medicine in the State of Florida. Last, Dr. Paylan states that due to prosecutorial misconduct, it was not her who was convicted in her criminal trial.

Notably, nowhere in her brief does Dr. Paylan claim that she has state authority to handle controlled substances—the threshold issue in this matter. To the contrary, Dr. Paylan's arguments center on the alleged factual background of her criminal conviction, and fail to contradict the basis upon which the Government seeks summary disposition in this proceeding. Respondent has therefore failed to rebut the substantial issue raised by the Government.

The Government asserts that Respondent's DEA Certificate of Registration must be revoked because Respondent does not have a medical license issued by the state in which she practices.⁵ This assertion is significant because DEA precedent holds that a practitioner's DEA Certificate of Registration for controlled substances must be summarily revoked if the applicant is not authorized to handle controlled substances in the state in which she maintains her DEA registration.⁶ Pursuant to 21 U.S.C.

§ 823(f), only a “practitioner” may receive a DEA registration. Under 21 U.S.C. § 802(21), a “practitioner” must be “licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute [or] dispense . . . controlled substance[s].” Given this statutory language, the DEA Administrator does not have the authority under the Controlled Substances Act to maintain a practitioner's registration if that practitioner is not authorized to dispense controlled substances.⁷

In her Response and Brief, Dr. Paylan counters the Government's assertions arguing that collateral estoppel/*res judicata* should apply to this proceeding, and requests that I “fashion an order that is something other than revocation, and more like a temporary suspension and/or abeyance until these state issues of *res judicata* are fully addressed before the ALJ in Tallahassee, and/or until a decision of the State Appellate Court is rendered reversing the conviction.”⁸ Dr. Paylan alleges that the Board's Order of Emergency Suspension determination was based on Dr. Paylan's conviction in a State criminal trial for the same conduct she was previously exonerated of before the Board.⁹ Dr. Paylan thus avers that *res judicata* should have applied in the Board's emergency suspension orders. Dr. Paylan also argues that “if the local DEA agent found Dr. Paylan to have engaged in no wrongdoing at the time of the transaction, then Dr. Paylan, is at a minimum, entitled to a collateral estoppel argument now.”¹⁰

This Agency has held “that a registrant cannot collaterally attack the results of a state criminal or administrative proceeding in a proceeding under section 304 of the CSA.”¹¹ Thus, in this proceeding, Dr. Paylan is precluded from attacking the results of both the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, and the

Abraham A. Chaplan, M.D., 57 FR 55280 (1992); See also *Bio Diagnosis Int'l*, 78 FR 39327, 39331 (2013) (distinguishing distributor applicants from other “practitioners” in the context of summary disposition analysis).

⁷ See *Abraham A. Chaplan, M.D.*, 57 FR 55,280, 55,280 (1992), and cases cited therein. In *Chaplan*, DEA Administrator Robert C. Bonner adopts the ALJ's opinion that “the DEA lacks statutory power to register a practitioner unless the practitioner holds state authority to handle controlled substances.” *Id.*

⁸ Resp. Br. at 12.

⁹ Resp. Br. at 7–8.

¹⁰ Resp. Br. at 10.

¹¹ *Sumil Bhasin, M.D.*, 72 FR 5,082, 5,083 (2007); see also *Shahid Musud Siddiqui*, 61 FR 14818, 14,818–19 (1996); and *Robert A. Leslie*, 60 FR 14,004, 14,005 (1995).

Florida Department of Health Order of Emergency Suspension. Similarly, a DEA agent's purported inaction in pursuing Dr. Paylan for an alleged crime does not carry any preclusive weight because it is not an issue that has been litigated. Therefore, collateral estoppel is inapplicable to Dr. Paylan's aforementioned claim. Thus, Dr. Paylan's collateral estoppel argument fails.

As for her *res judicata* claim, Dr. Paylan argues that the DEA had knowledge of, but did not take action on, the event that Dr. Paylan was convicted of in State court.¹² Dr. Paylan represents that the Florida State Administrative Law Judge assigned to the *DOH v. Paylan* Case No:15–0429 issued an initial order recognizing the presence of *res judicata* as an issue applicable to the administrative proceeding.¹³ But in this proceeding, Dr. Paylan herself notes “the absence of a formal proceeding by the DEA such as convening of this forum may preclude the argument of *res judicata*.”¹⁴

In this instance, the DEA is not relitigating a claim that was previously heard, and it is not bringing a claim that could have been litigated in a prior DEA proceeding in accordance with the doctrine of *res judicata*.¹⁵ Rather, the event that served as the catalyst for the Government's Order to Show Cause in this proceeding was the State of Florida Department of Health Order of Emergency Suspension of License. But the present proceeding has been convened for the purpose of determining whether the Administrator should revoke the Respondent's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(3) and 823(f)(4), and whether the Administrator should deny any pending applications for renewal or modification of such registration, and any applications for new DEA registrations pursuant to 21 U.S.C. 823(f). Absent the existence in this present proceeding of a claim that has been previously litigated, or a claim that could have been litigated in a prior proceeding, the doctrine of *res judicata* is inapplicable here.

Dr. Paylan's second and third arguments, that she experienced ineffective assistance of counsel in her state criminal proceeding, and that her conviction was purportedly a person who was presented to the jury as a non-doctor, *i.e.* not Dr. Paylan, fail because these arguments do not relate to the issue of whether Dr. Paylan currently

¹² Resp. Br. at 10.

¹³ Resp. Br. at 8.

¹⁴ Resp. Br. at 9.

¹⁵ OTSC at 1.

⁴ Gov't Mot. For Summary Disp. at 2 & Attachment 1 (State of Florida Department of Health Order of Emergency Suspension of License).

⁵ *Id.*

⁶ See 21 U.S.C. 802(21), 823(f), 824(a)(3); see also *House of Medicine*, 79 FR 4959, 4961 (2014); *Deanwood Pharmacy*, 68 FR 41662 (2003); *Wayne D. Longmore, M.D.*, 77 FR 67,669 (2012); *Alan H. Olefsky, M.D.*, 72 FR 42,127 (2007); *Layfe Robert Anthony, M.D.*, 67 FR 15,811 (2002); *George Thomas, PA-C*, 64 FR 15811 (1999); *Shahid Musud Siddiqui, M.D.*, 61 Fed. Reg 14818–02 (1996); *Michael D. Lawton, M.D.*, 59 FR 17792 (1994);

has authority to handle controlled substances in the State of Florida. For this reason, Dr. Paylan's second and third claims fall outside the scope of this proceeding as well.

Last, while I am mindful of Dr. Paylan's request for a temporary suspension or abeyance of these proceedings, the DEA has consistently summarily revoked DEA certificates of registration based on state medical board temporary suspension orders, and it has previously denied staying its proceedings pending the outcome of a Respondent's appeal of his state licensing authority's suspension of his license.¹⁶

As detailed above, only a "practitioner" may receive a DEA registration.¹⁷ Finding that Dr. Paylan is currently without license to practice as a medical doctor, and thus is not authorized to handle controlled substances in the State of Florida, I cannot and will not recommend that these proceedings be held in abeyance, or that Respondent's registration be suspended. I will instead recommend her registration be revoked.

Order Granting the Government's Motion for Summary Disposition and Recommendation

I find there is no genuine dispute regarding whether Respondent is a "practitioner" as that term is defined by 21 U.S.C. 802(21), and that based on the record the Government has established, by at least a preponderance of the evidence, that Respondent is not a practitioner and is not authorized to dispense controlled substances in the state in which she seeks to practice with a DEA Certificate of Registration. I

¹⁶ See *Steven I. Topel, M.D.*, 58 FR 37,509(1993)(revoking Respondent's COR based on a temporary suspension order issued by the Kentucky Board of Medical Licensure); see also *Carmencita E. Fallora, M.D.*, 60 FR 47,967, 47,968 (1995) (rejecting Respondent's argument that DEA did not have legal authority under 21 U.S.C. 824(a)(3) to summarily revoke her DEA registration based on a state medical board's temporary suspension order; See also *Gary Alfred Shearer, M.D.*, 78 FR 19,009, 19,012 (2013) (holding that "[r]evocation of the DEA certificate is warranted even where a practitioner's state authority has been summarily suspended and the state has yet to provide the practitioner with a hearing to challenge the state action at which he may ultimately prevail." *Id.*)

¹⁷ In *James L. Hooper*, 76 FR 71, 371, 71,372 (2011), the Administrator held that "the controlling question is not whether a practitioner's license to practice medicine in the state is suspended or revoked; rather, it is whether the Respondent is currently authorized to handle controlled substances in the state" and "even where a practitioner's state license has been suspended for a period of certain duration, the practitioner no longer meets the statutory definition of a practitioner." *Id.* (citing *Anne Lazar Thorn, M.D.*, 62 FR 12,847, 12,848 (1997).

further find that the Respondent has failed to dispute this assertion. Accordingly, I GRANT the Government's Motion for Summary Disposition.

Upon this finding, I ORDER that this case be forwarded to the Administrator for final disposition and I recommended that Respondent's DEA Certificate of Registration should be REVOKED and any pending application for the renewal or modification of the same should be DENIED.

Dated: July 1, 2015

s/Christopher B. McNeil

Administrative Law Judge

[FR Doc. 2015-28727 Filed 11-10-15; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certifications for 2015 Under the Federal Unemployment Tax Act

AGENCY: Employment and Training Administration

ACTION: Notice.

SUMMARY: The Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*, thereby enabling employers who make contributions to state unemployment funds to obtain certain credits against their liability for the federal unemployment tax. By letter, the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Signed in Washington, DC, October 31, 2015.

Portia Wu,

Assistant Secretary, Employment and Training Administration.

October 31, 2015

The Honorable Jacob J. Lew,
Secretary of the Treasury,
Department of the Treasury,
1500 Pennsylvania Avenue NW.,
Washington, DC 20220.

Dear Secretary Lew:

Transmitted herewith are an original and one copy of the certifications of the states and their unemployment compensation laws for the 12-month period ending on October 31, 2015. The first certification is required with respect to the normal federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986 (IRC), and the second certification is required with respect to the

additional tax credit by Section 3303 of the IRC. Both certifications list all 53 jurisdictions.

Sincerely,

THOMAS E. PEREZ

Enclosures

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON, DC

CERTIFICATION OF STATES TO THE SECRETARY OF THE TREASURY PURSUANT TO SECTION 3304(c) OF THE INTERNAL REVENUE CODE OF 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named states to the Secretary of the Treasury for the 12-month period ending on October 31, 2015, in regard to the unemployment compensation laws of those states, which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama	Louisiana
Alaska	Maine
Arizona	Maryland
Arkansas	Massachusetts
California	Michigan
Colorado	Minnesota
Connecticut	Mississippi
Delaware	Missouri
District of Columbia	Montana
Florida	Nebraska
Georgia	Nevada
Hawaii	New Hampshire
Idaho	New Jersey
Illinois	New Mexico
Indiana	New York
Iowa	North Carolina
Kansas	North Dakota
Kentucky	Ohio
Oklahoma	Utah
Oregon	Vermont
Pennsylvania	Virginia
Puerto Rico	Virgin Islands
Rhode Island	Washington
South Carolina	West Virginia
South Dakota	Wisconsin
Tennessee	Wyoming
Texas	

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 2015.

THOMAS E. PEREZ

UNITED STATES DEPARTMENT OF
LABOR

OFFICE OF THE SECRETARY

WASHINGTON, DC

*CERTIFICATION OF STATE
UNEMPLOYMENT COMPENSATION
LAWS TO THE SECRETARY OF THE
TREASURY PURSUANT TO SECTION
3303(b)(1) OF THE INTERNAL
REVENUE CODE OF 1986*

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named states, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 2015:

Alabama	Louisiana
Alaska	Maine
Arizona	Maryland
Arkansas	Massachusetts
California	Michigan
Colorado	Minnesota
Connecticut	Mississippi
Delaware	Missouri
District of Columbia	Montana
Florida	Nebraska
Georgia	Nevada
Hawaii	New Hampshire
Idaho	New Jersey
Illinois	New Mexico
Indiana	New York
Iowa	North Carolina
Kansas	North Dakota
Kentucky	Ohio
Oklahoma	Utah
Oregon	Vermont
Pennsylvania	Virginia
Puerto Rico	Virgin Islands
Rhode Island	Washington
South Carolina	West Virginia
South Dakota	Wisconsin
Tennessee	Wyoming
Texas	

This certification is for the maximum additional credit allowable under Section 3302(b) of the Code, subject to the limitations of Section 3302(c) of the Code.

Signed at Washington, DC, on October 31, 2015.

THOMAS E. PEREZ

[FR Doc. 2015-28710 Filed 11-10-15; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment
Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the "International Training Application." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before January 11, 2016.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202-691-5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, at 202-691-7763 (this is not a toll free number). (See Addresses section.)

SUPPLEMENTARY INFORMATION:**I. Background**

The BLS is one of the largest labor statistics organizations in the world and has provided international training since 1945. Each year, the BLS Division of International Technical Cooperation (DITC) conducts seminars of 1 to 2 weeks duration at its training facilities in Washington, DC In addition to the annual international seminars, DITC provides technical assistance upon request and organizes visits to the BLS for many international visitors each year. The seminars bring together

statisticians, economists, analysts, and other data producers and users from countries all over the world. Each seminar is designed to strengthen the participants' ability to collect and analyze economic and labor statistics.

II. Current Action

Office of Management and Budget clearance is being sought for the proposed extension of the International Training Application. Continuing the existing collection will allow the BLS to continue to conduct international seminars. No questions have been added or deleted on the form since the last Office of Management and Budget approval in 2013.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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.

Type of Review: Extension.

Agency: Bureau of Labor Statistics.

Title: International Training

Application.

OMB Number: 1220-0179.

Affected Public: Individuals or households.

Total Respondents: 100.

Frequency: On occasion.

Total Responses: 100.

Average Time per Response: 20 minutes.

Estimated Total Burden Hours: 34 hours.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 6th day of November 2015.

Kimberly Hill,

*Chief, Division of Management Systems,
Bureau of Labor Statistics.*

[FR Doc. 2015-28707 Filed 11-10-15; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Agency Information Collection Activities: Announcement of the Office of Management and Budget Control Numbers Under the Paperwork Reduction Act

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice; announcement of the Office of Management and Budget's (OMB) approval of information collection requirements.

SUMMARY: The Occupational Safety and Health Administration announces that OMB extended its approval for a

number of information collection requirements found in sections of 29 CFR parts 1910, 1915, and 1926, and regulations on Safety and Health On-site Consultation Agreements, Recordkeeping and Reporting Occupational Injuries and Illnesses, and Occupational Safety and Health Act Variances. OSHA sought approval of these requirements under the Paperwork Reduction Act (PRA), and, as required by that Act, is announcing the approval numbers and expiration dates for these requirements.

DATES: This notice is effective November 12, 2015.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3609, 200 Constitution Avenue NW., Washington, DC 20210, telephone: (202) 693-2222.

SUPPLEMENTARY INFORMATION: In a series of **Federal Register** notices, the Agency announced its requests to OMB to renew its current extensions of approvals for

various information collection (paperwork) requirements in its safety and health standards pertaining to general industry, shipyard employment, and the construction industry (*i.e.*, 29 CFR parts 1910, 1915, and 1926), and regulations containing Occupational Safety and Health On-site Consultation Agreements, Recordkeeping and Reporting, Occupational Injuries and Illnesses, Occupational Safety and Health State Plans, and Occupational Safety and Health Act Variances. In these **Federal Register** announcements, the Agency provided 60-day comment periods for the public to respond to OSHA's burden hour and cost estimates.

In accord with the PRA (44 U.S.C. 3501-3520), OMB approved these information collection requirements. The table below provides the following information for each of these information collection requirements approved by OMB: The title of the **Federal Register** notice; the **Federal Register** reference (date, volume, and leading page); OMB's Control Number; and the new expiration date.

Title of the information collection request	Date of Federal Register publication, Federal Register reference, and OSHA docket No.	OMB control No.	Expiration date
13 Carcinogens Standard (29 CFR 1910.1003, 1915.1003, and 1926.1103).	April 27, 2015, 80 FR 23301, Docket No. OSHA 2011-08600.	1218-0085	08/31/2018
Acrylonitrile Standard (29 CFR 1910.1045)	November 13, 2014, 79 FR 67463, Docket No. OSHA 2011-0195.	1218-0126	06/30/2018
Asbestos in Construction Standard (29 CFR 1926.1101).	May 21, 2015, 80 FR 29344, Docket No. OSHA 2012-0009.	1218-0134	08/31/2018
Blasting Operations and the use of Explosives (29 CFR part 1926, subpart U).	June 11, 2015, 80 FR 33294, Docket No. OSHA 2011-0747.	1218-0217	10/31/2018
Bloodborne Pathogens Standard (29 CFR 1910.1030)	October 7, 2014, 79 FR 60503, Docket No. OSHA 2010-0047.	1218-0180	06/30/2018
Cadmium in Construction (29 CFR 1926.1127)	May 21, 2015, 80 FR 29346, Docket No. OSHA 2012-0004.	1218-0186	10/31/2018
Coke Oven Emissions (29 CFR 1910.1029)	September 9, 2014, 79 FR 53450, Docket No. OSHA 2011-0181.	1218-0128	05/31/2018
Confined Spaces in Construction (29 CFR part 1926, subpart AA).	October 22, 2014, 79 FR 63174, Docket No. OSHA 2011-0034.	1218-0258	05/31/2018
Cotton Dust (29 CFR 1910.1043)	November 13, 2014, 79 FR 67462, Docket No. OSHA 2011-0194.	1218-0061	05/31/2018
Electrical Standards for Construction (29 CFR part 1926, subpart K) and for General Industry (29 CFR part 1910, subpart S).	October 31, 2014, 79 FR 64838, Docket No. OSHA 2011-0187.	1218-0130	06/30/2018
Forging Machines (29 CFR 1910.218)	June 30, 2014, 79 FR 36832, Docket No. OSHA 2011-0064.	1218-0228	03/31/2018
General Provisions and Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment (29 CFR part 1915).	October 22, 2014, 79 FR 63171, Docket No. OSHA 2011-0034.	1218-0011	03/31/2018
Grain Handling Facilities (29 CFR 1910.272)	February 7, 2014, 79 FR 7479, Docket No. OSHA 2011-0028.	1218-0206	10/31/2017
Mechanical Power Press (29 CFR 1910.217(e)(1))	April 29, 2015, 80 FR 23820, Docket No. OSHA 2012-0017.	1218-0229	10/31/2017
Methylene Chloride (29 CFR 1910.1052)	December 4, 2014, 79 FR 72030, Docket No. OSHA 2011-0060.	1218-0179	06/30/2018
Occupational Safety and Health On-site Consultation Agreements (29 CFR part 1908).	March 30, 2015, 80 FR 16700, Docket No. OSHA 2011-0125.	1218-0110	06/30/2018
Permit-Required Confined Spaces (29 CFR 1910.146)	April 27, 2015, 80 FR 23297, Docket No. OSHA 2011-0858.	1218-0203	08/31/2018
Recordkeeping and Reporting Occupational Injuries and Illnesses (29 CFR part 1904).	February 20, 2014, 79 FR 9768, Docket No. OSHA 2010-0055.	1218-0176	01/31/2018
Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)).	April 29, 2015, 80 FR 23820, Docket No. OSHA 2012-0017.	1218-0070	10/31/2018

Title of the information collection request	Date of Federal Register publication, Federal Register reference, and OSHA docket No.	OMB control No.	Expiration date
Respiratory Protection Standard (29 CFR 1910.134) ..	July 10, 2014, 79 FR 39412, Docket No. OSHA 2011-0027.	1218-0099	03/31/2018
Servicing Multi-Piece and Single Piece Rim Wheels (29 CFR 1910.177).	October 7, 2014, 79 FR 60502, Docket No. OSHA 2011-0189.	1218-0219	06/30/2018
Shipyards Employment Standards (29 CFR part 1915)	November 13, 2014, 79 FR 67465, Docket No. OSHA 2011-0190.	1218-0220	06/30/2018
Slings Standard (29 CFR 1910.184)	October 22, 2014, 79 FR 63172, Docket No. OSHA 2011-0063.	1218-0223	06/30/2018
Telecommunications Standard (29 CFR 1910.268)	September 25, 2015, 79 FR 57584, No. OSHA 2010-0057.	1218-0225	06/30/2018
Variance Regulations (29 CFR 1905.10, 1905.11 and 1905.12).	August 20, 2014, 79 FR 49342, Docket No. OSHA 2009-0024.	1218-0265	06/30/2018
Vehicle-Mounted Elevating and Rotating Work Platforms Standard (29 CFR 1910.67).	September 25, 2014, 79 FR 57583, Docket No. OSHA 2011-0185.	1218-0230	06/30/2018
Vertical Tandem Lifts for Marine Terminals (29 CFR part 1917).	October 9, 2014, 79 FR 61101, Docket No. OSHA 2011-0066.	1218-0260	06/30/2018
Vinyl Chloride Standard	December 4, 2014, 79 FR 72301, Docket No. OSHA 2011-0196.	1218-0010	06/30/2018

In accordance with 5 CFR 1320.5(b), an agency cannot conduct, sponsor, or require a response to a collection of information unless the collection displays a valid OMB control number and the agency informs respondents that they need not respond to the collection of information unless it displays a valid OMB control number.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is 44 U.S.C. 3506 *et seq.* and Secretary of Labor's Order No. 1-2012 (77 FR 3912).

Signed at Washington, DC, on November 6, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015-28762 Filed 11-10-15; 8:45 am]

BILLING CODE 4510-26-P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

AGENCY: Legal Services Corporation.

ACTION: Meeting Notice.

DATE AND TIME: The Legal Services Corporation's Board of Directors will meet telephonically on November 17, 2015. The meeting will commence at 2:15 p.m., EST, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington, DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in

person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1-866-451-4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately "MUTE" your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda
2. Consider and act on the Board of Directors' transmittal to accompany the Inspector General's Semiannual Report to Congress for the period of April 1, 2015 through October 31, 2015
3. Public comment
4. Consider and act on other business
5. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION:

Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295-1500. Questions may be sent by electronic mail to FR_NOTICE_QUESTION@lsc.gov.

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other

accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295-1500 or FR_NOTICE_QUESTION@lsc.gov, at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: November 9, 2015.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs and General Counsel.

[FR Doc. 2015-28819 Filed 11-9-15; 4:15 pm]

BILLING CODE 7050-01-P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 671 of the Code of Federal Regulations. This is the required notice of permit applications received. This notice replaces one published on Nov. 5, 2015 that was missing information on the permit number and applicant's name.

DATES: Interested parties are invited to submit written data, comments, or

views with respect to this permit application by December 14, 2015. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address or ACApermits@nsf.gov or (703) 292-7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2016-020

1. Applicant: Laura K.O. Smith, Owner/Operator, Quixote Expeditions, 1498 Paradise Point Rd., Oakland, MD 21550.

Activity for Which Permit Is Requested

A small expedition would use a reinforced ketch rigged sailing yacht to transit from Ushuaia, Chile, to the Antarctic Peninsula region and back. Activities to be conducted include: Passenger landings, hiking, photography, wildlife viewing, and possible station visits. Designated pollutants that would be generated during the trip include air emissions, waste water (urine, grey-water) and solid waste (food waste, human solid waste, and packaging materials). Human waste and grey water would be disposed of in offshore waters, complying with the provisions of Article 5 of Annex III and Article 6 of Annex IV of MARPOL Protocol and the Convention. All other wastes would be kept for proper disposal in Ushuaia at the end of the expedition. Seawater samples would be collected for studies on microplastics.

Location

Antarctic Peninsula region, including Deception Island, Foyen Harbor, Paradise Bay, Port Lockroy, Vernadsky, Hovgard Island, Hero Inlet/Anvers Island, and Melchior Islands.

Dates

January 16, 2015–February 6, 2016.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2015-28737 Filed 11-10-15; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-012 and 52-013; NRC-2008-0091]

In the Matter of Nuclear Innovation North America LLC, Combined Licenses for South Texas Project, Units 3 and 4; Notice of Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of hearing; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** (FR) on October 13, 2015, regarding an evidentiary session to be held on November 19, 2015, to receive testimony and exhibits in the uncontested portion of this proceeding regarding the application of Nuclear Innovation North America LLC, for combined licenses to construct and operate two additional units (Units 3 and 4) at the South Texas Project Electric Generating Station site in Matagorda County near Bay City, Texas. This action corrects the start time of the hearing.

DATES: The correction is effective November 12, 2015. The hearing for the combined operating license for South Texas Project Generating Station will be held on November 19, 2015, beginning at 9:00 a.m. Eastern Time, at the Commission's headquarters in Rockville, Maryland. The hearing on these issues will continue on subsequent days, if necessary.

ADDRESSES: Please refer to Docket ID NRC-2008-0091 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 Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2008-0091. 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.

- *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: Glenn Ellmers, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-0442; email: Glenn.Ellmers@nrc.gov.

SUPPLEMENTARY INFORMATION: In the FR on October 13, 2015, in FR Doc. 2015-25892 on page 61492, in the third column, in the first sentence of the **DATES** section, correct "8:30 a.m." to read "9:00 a.m." In the same notice, on page 61493, in the first column under the "Evidentiary Uncontested Hearing" heading, correct "8:30 a.m." to read "9:00 a.m."

Dated at Rockville, Maryland, this 5th day of November, 2015.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2015-28767 Filed 11-10-15; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Digital I&C; Cancellation of the November 19, 2015, ACRS Subcommittee Meeting

The ACRS Subcommittee meeting on Digital I&C scheduled for November 19, 2015, 1:00 p.m. until 5:00 p.m., has been cancelled.

The notice of this meeting was previously published in the **Federal Register** on Wednesday, October 21, 2015, (80 FR 63846).

Information regarding this meeting can be obtained by contacting Christina Antonescu, Designated Federal Official (DFO) (Telephone 301-415-6792 or Email: Christina.Antonescu@nrc.gov) between 7:30 a.m. and 5:15 p.m. (EST)).

Dated: November 3, 2015.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2015-28591 Filed 11-10-15; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. CP2016-16; Order No. 2805]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 13, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Notice of Commission Action
- III. Ordering Paragraphs

I. Introduction

On November 5, 2015, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).¹

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2016-16 for consideration of matters raised by the Notice.

¹ Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, November 5, 2015 (Notice).

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than November 13, 2015. The public portions of the filing can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Curtis E. Kidd to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2016-16 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than November 13, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015-28734 Filed 11-10-15; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket No. CP2014-1; Order No. 2804]

Amendment to Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to Parcel Select & Parcel Return Service Contract 5 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 12, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Notice of Filings
- III. Ordering Paragraphs

I. Introduction

On November 4, 2015, the Postal Service filed notice that it has agreed to an Amendment to the existing Parcel Select & Parcel Return Service Contract 5 negotiated service agreement approved in this docket.¹ In support of its Notice, the Postal Service includes a redacted copy of the Amendment and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted Amendment and supporting financial information under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. Notice at 1.

The Amendment seeks to adjust the prices listed in Table 2 of Section I.I.3, as contemplated by the terms of the original contract.

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. *Id.* The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. 3633. *Id.* Attachment B at 1.

II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than November 12, 2015. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Jennaca D. Upperman to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2014-1 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Jennaca D. Upperman to serve as an officer of the Commission (Public Representative) to

¹ Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Parcel Select and Parcel Return Service Contract 5, November 4, 2015 (Notice).

represent the interests of the general public in this proceeding.

3. Comments are due no later than November 12, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015-28703 Filed 11-10-15; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76371; File No. SR-BX-2015-065]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Business Continuity and Disaster Recovery Plans Testing Requirements

November 5, 2015.

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 October 30, 2015, NASDAQ OMX BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 adopt business continuity and disaster recovery plans (“BC/DR Plans”) testing requirements for certain Exchange Members³ and BX Options Market (“BOM”) Options Participants⁴ (“Participants”) in connection with

Regulation Systems Compliance and Integrity (“Regulation SCI”).⁵

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxbx.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 is proposing to adopt new Rule 1170 to implement the BC/DR Plans requirements of Rule 1004 of Regulation SCI. As adopted by the Commission, Regulation SCI applies to certain self-regulatory organizations (including the Exchange), alternative trading systems (“ATSs”), plan processors, and exempt clearing agencies (collectively, “SCI entities”), and will require these SCI entities to comply with requirements with respect to the automated systems central to the performance of their regulated activities. Among the requirements of Regulation SCI is Rule 1001(a)(2)(v), which requires the Exchange and other SCI entities to maintain “[b]usiness continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption.”⁶ The Exchange has put extensive time and resources toward planning for system failures and already maintains robust BC/DR Plans consistent with the Rule. As set forth below, in connection with Regulation

SCI, the Exchange is proposing to require certain Members to participate in testing of the operation of the Exchange’s BC/DR Plans.

With respect to an SCI entity’s BC/DR Plans, including its backup systems, paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to: “[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.”⁷ Paragraph (b) of Rule 1004 of Regulation SCI further requires each SCI entity to “[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months.”⁸ In order to comply with Rule 1004 of Regulation SCI, the Exchange proposes to adopt new Rule 1170, which incorporates the requirements of Rule 1004 of Regulation SCI as part of the Exchange’s rules, and sets forth the notice, selection criteria and obligations of Members and Participants with respect to BC/DR Plans testing.

BX proposes to adopt Rule 1170(a), which will set forth the Exchange’s obligations with respect to the selection of Members and Participants for testing. Specifically, the rule will require BX to “[e]stablish standards for the designation of those Members and Options Participants that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.” The proposed new rule further provides that “[s]uch standards may include volume-based and/or market share-based criteria, and may be adjusted from time to time by the Exchange.” Lastly, the proposed new rule will require BX to provide public notice of the standards that it adopts.

BX is proposing to adopt Rule 1170(b), which will set forth the obligations of BX and its Members and Participants with respect to testing. Specifically, the rule will require BX to “designate Members and Options Participants pursuant to the standards established in paragraph (a) of this rule and require participation by such

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 0120(i).

⁴ The term “Options Participant” is defined as a category of BX Member that is authorized to “transact business on BX Options via the Trading System. Options Participants may trade options for their own proprietary accounts or, if authorized to do so under applicable law, and consistent with these BX Options Rules and with applicable law and SEC rules and regulations, may conduct business on behalf of Customers.” See BOM Option Rules, Chapter II, Section 1(a).

⁵ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (“SCI Adopting Release”).

⁶ 17 CFR 242.1001(a)(2)(v).

⁷ 17 CFR 242.1004(a).

⁸ 17 CFR 242.1004(b).

designated Members and Options Participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the Exchange, provided that such frequency shall not be less than once every 12 months.” Moreover, the rule will require BX to provide at least six months prior notice to Members and Participants that are designated for mandatory testing. Lastly, the rule will provide notice that participation in testing is a condition of membership for Members and Participants that are designated for testing.

The Exchange encourages all Members and Participants to connect to the Exchange’s backup systems and to participate in testing of such systems;⁹ however, certain Members and Participants will be obligated to participate in BC/DR Plans testing. In adopting new Rule 1170, the Exchange will require mandatory participation in BC/DR Plans testing by those Members and Participants that the Exchange reasonably determines are, taken as whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans on the Exchange and BOM, respectively. The Exchange believes that using overall participation on its markets (by volume and/or market share) as a measure to select Members and Participants for mandatory participation in BC/DR Plans testing is a reasonable means by which it can determine which Members and Participants are necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.¹⁰ For each BC/DR Plans test cycle, the Exchange will select the top five Members on the Exchange and the top five Participants on BOM based on BX’s measure of overall participation on each of those markets. All notices concerning BC/DR Plans testing will be posted on the Exchange’s Web site.

The Exchange is proposing to initially select Members and Participants with the highest levels of trading volume on

⁹ In this regard, BX will allow any Member or Participant to participate in the testing of the Exchange’s BC/DR Plans, which is consistent with the Plan. See SCI Adopting Release, *supra* note 5 at 72350. BX will provide instructions on how a Member or Participant must inform BX of its interest in participating in an upcoming BC/DR Plans test via the announcement of the test date. A Member or Participant must provide BX notice of its interest to participate at least a week prior to the test date and must have the appropriate connection for testing in place.

¹⁰ BX will provide notice of the specific selection criteria and measurement period in a notice to Members and Participants. The initial selection criteria and measurement period will be announced no later than November 3, 2015.

the Exchange and BOM over four calendar months (“Measurement Period”) as mandatory testing Members and Participants, respectively.¹¹ Specifically, the Measurement Period will be the four calendar months of trading immediately prior to the Exchange’s announcement of the next BC/DR Plans test date. The Measurement Period will always begin at a point after the Exchange announces the criteria to be used in the next BC/DR Plans test. By way of example, if on October 6, 2017 the Exchange announced the BC/DR Plans test selection criteria and on March 2, 2018 the Exchange announced a BC/DR Plans test date of September 8, 2018, the Measurement Period used to select Members and Participants subject to mandatory testing would be November 2017 through February 2018. Members and Participants not obligated to participate that wish to participate in this test must inform the Exchange no later than September 1, 2018.¹²

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,¹³ in general, and further the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal will ensure that the Members and Participants necessary to ensure the maintenance of fair and orderly markets are properly designated consistent with Rule 1004 of Regulation SCI. Specifically, the proposal will adopt clear and objective criteria with respect to the designation of Members and Participants that are required to participate in the testing of the Exchange’s BC/DR Plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release, “SROs have the

¹¹ The Exchange may change the total number of Members and Participants selected from time to time.

¹² See note 9.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI’s requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.”¹⁵ The Exchange believes that this proposal is consistent with such authority and legal responsibility.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange 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, as amended. To the contrary, the proposal is not a competitive proposal but rather is necessary for the Exchange’s compliance with Regulation SCI.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6)(iii) thereunder.¹⁷ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁸ A proposed rule change

¹⁵ See SCI Adopting Release, *supra* note 5 at 72350.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 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

filed under Rule 19b-4(f)(6)(iii)¹⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to incorporate changes required under Regulation SCI, such as establishing standards for designating BC/DR participants, prior to the November 3, 2015 compliance date. Accordingly, the Commission designates the proposed rule change to be operative upon filing.²¹

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-BX-2015-065 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities

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.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2015-065. 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2015-065 and should be submitted on or before December 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-28688 Filed 11-10-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31895; File No. 812-14491]

Legg Mason Partners Fund Advisor, LLC, et al.; Notice of Application

November 5, 2015.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the

Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Creation Units for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to perform creations and redemptions of Creation Units in-kind in a master-feeder structure.

APPLICANTS: Legg Mason Partners Fund Advisor, LLC ("Initial Adviser"), Legg Mason ETF Equity Trust ("Trust") and Legg Mason Investor Services, LLC ("LMIS").

FILING DATES: The application was filed on June 17, 2015, and amended on September 11, 2015 and October 27, 2015.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 30, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090;

²² 17 CFR 200.30-3(a)(12).

Applicants: The Initial Adviser and the Trust, 620 Eighth Avenue, New York, NY 10018; LMIS, 100 International Drive, Baltimore, MD 21202.

FOR FURTHER INFORMATION CONTACT: Robert Shapiro, Senior Counsel at (202) 551-7758, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Trust is a Maryland statutory trust and is, or will be, prior to the commencement of operations of the Initial Fund (as defined below), registered with the Commission as an open-end management investment company and will offer multiple series.

2. The Initial Adviser will be the investment adviser to the Initial Fund (defined below). The Initial Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). Any other Adviser (defined below) will also be registered as an investment adviser under the Advisers Act. The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers (each, a "Sub-Adviser") to particular Funds, or their respective Master Funds (defined below). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Trust will enter into a distribution agreement with one or more distributors, including LMIS. Each distributor will act as distributor and principal underwriter ("Distributor") of one or more of the Funds. Each Distributor will be a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act"). The Distributor of any Fund may be an affiliated person or an affiliated person of an affiliated person of that Fund's Adviser and/or Sub-Adviser(s). No Distributor will be affiliated with any Exchange (defined below).

4. Applicants request that the order apply to the initial series of the Trust described in the application ("Initial Fund"), and any additional series of the Trust, and any other open-end management investment company or series thereof, that may be created in the

future ("Future Funds"), each of which will operate as an exchanged-traded fund ("ETF") and will track a specified index comprised of domestic and/or foreign equity and/or fixed income securities (each, an "Underlying Index"). Any Future Fund will (a) be advised by the Initial Adviser, or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an "Adviser") and (b) comply with the terms and conditions of the application. The Initial Fund and Future Funds, together, are the "Funds."¹

5. Applicants state that a Fund may operate as a feeder fund in a master-feeder structure ("Feeder Fund"). Applicants request that the order permit a Feeder Fund to acquire shares of another registered investment company in the same group of investment companies having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the limitations in section 12(d)(1)(A) of the Act and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B) of the Act ("Master-Feeder Relief"). Applicants may structure certain Feeder Funds to generate economies of scale and incur lower overhead costs.² There would be no ability by Fund shareholders to exchange Shares of Feeder Funds for shares of another feeder series of the Master Fund.

6. Each Fund, or its respective Master Fund, will hold certain securities, currencies, other assets and other investment positions ("Portfolio Holdings") selected to correspond generally to the performance of its Underlying Index. Certain of the Funds will be based on Underlying Indexes that will be comprised of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) Domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S.

¹ All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

² Operating in a master-feeder structure could also impose costs on a Feeder Fund and reduce its tax efficiency. The Feeder Fund's board of directors or trustees will consider any such potential disadvantages against the benefits of economies of scale and other benefits of operating within a master-feeder structure. In a master-feeder structure, the Master Fund—rather than the Feeder Fund—would generally invest its portfolio in compliance with the requested order.

markets. Other Funds will be based on Underlying Indexes that will be comprised of foreign and domestic, or solely foreign, equity and/or fixed income securities ("Foreign Funds").

7. Applicants represent that each Fund, or its respective Master Fund, will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index ("Component Securities") and TBA Transactions³, and in the case of Foreign Funds, Component Securities and Depositary Receipts⁴ representing Component Securities. Each Fund, or its respective Master Fund, may also invest up to 20% of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash and cash equivalents, other investment companies, as well as in securities and other instruments not included in its Underlying Index but which the Adviser believes will help the Fund track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

8. The Trust may issue Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies ("130/30 Funds") or other long/short investment strategies ("Long/Short Funds"). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index⁵ and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long

³ A "to-be-announced transaction" or "TBA Transaction" is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

⁴ Depositary receipts representing foreign securities ("Depositary Receipts") include American Depositary Receipts and Global Depositary Receipts. The Funds, or their respective Master Funds, may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a "depository bank") and evidence ownership interests in a security or a pool of securities that have been deposited with the depository bank. A Fund, or its respective Master Fund, will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depository bank for any Depositary Receipts held by a Fund, or its respective Master Fund.

⁵ Underlying Indexes that include both long and short positions in securities are referred to as "Long/Short Indexes."

positions in securities so that total long exposure represents approximately 130% of such Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets, as specified by the underlying Long/Short Index. Each Business Day (defined below), each Long/Short Fund and 130/30 Fund will provide full portfolio transparency on the Fund's publicly available Web site ("Web site") by making available the Fund's, or its respective Master Fund's, Portfolio Holdings before the commencement of trading of Shares on the Listing Exchange (defined below).⁶ The information provided on the Web site will be formatted to be reader-friendly.

9. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all, of the Component Securities of its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund, or its respective Master Fund, will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

10. The Funds will be entitled to use their Underlying Indexes pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains an Underlying Index (each, an "Index Provider") or a sub-licensing arrangement with the Adviser, which has or will have a licensing agreement with such Index Provider.⁷ A "Self-Indexing Fund" is a Fund for which an affiliated person, as defined in section 2(a)(3) of the Act (an "Affiliated

Person"), or an affiliated person of an Affiliated Person (a "Second-Tier Affiliate"), of the Trust or a Fund, of an Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an "Affiliated Index Provider")⁸ will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an "Affiliated Index").⁹ Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

11. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated.

12. Applicants propose that each day that a Fund is open for business, including any day that a Fund is required to be open under section 22(e) of the Act (a "Business Day"), each Self-Indexing Fund will post on its Web site, before commencement of trading of Shares on a national securities exchange as defined in section 2(a)(26) of the Act (an "Exchange") on which such Fund's Shares are primarily listed ("Listing Exchange"), the identities and

⁸ In the event that an Adviser or Sub-Adviser serves as the Affiliated Index Provider for a Self-Indexing Fund, the terms "Affiliated Index Provider" or "Index Provider," with respect to that Self-Indexing Fund, will be limited to the employees of the applicable Adviser or Sub-Adviser that are responsible for creating, compiling and maintaining the relevant Underlying Index.

⁹ The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be "investment companies" in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser ("Affiliated Accounts") as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser ("Unaffiliated Accounts"). The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

quantities of the Portfolio Holdings that will form the basis for the Fund's calculation of its NAV at the end of the Business Day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will provide an additional effective mechanism for addressing any such potential conflicts of interest.

13. In addition, applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self-Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.

14. Each Adviser and any Sub-Adviser has adopted or will adopt, pursuant to rule 206(4)-7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, the Initial Adviser has adopted policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the Initial Adviser or associated persons ("Inside Information Policy"). Any other Adviser and/or Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics¹⁰ and Inside Information Policy of each Adviser and Sub-Advisers, personnel of those entities with knowledge about the composition of a

¹⁰ The Initial Adviser has also adopted (and any other Adviser has adopted or will adopt) a code of ethics pursuant to rule 17j-1 under the Act and rule 204A-1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in rule 17j-1) from engaging in any conduct prohibited in rule 17j-1 ("Code of Ethics").

⁶ Under accounting procedures followed by each Fund, trades made on the prior Business Day ("T") will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

⁷ The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (or in case of a sub-licensing agreement, the Adviser) must provide the use of the Underlying Indexes and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

Portfolio Deposit¹¹ will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by the Index Provider. The Adviser will also include under Item 10.C. of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

15. To the extent the Self-Indexing Funds transact with an Affiliated Person of the Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees ("Board") will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, the Adviser, Affiliated Persons of the Adviser ("Adviser Affiliates") and Affiliated Persons of any Sub-Adviser ("Sub-Adviser Affiliates") may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by the Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission.

16. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments ("Redemption Instruments").¹² On any given Business

Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions)¹³ except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;¹⁴ (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind¹⁵ will be excluded from the Deposit Instruments and the Redemption Instruments;¹⁶ (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;¹⁷ or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a "Rebalancing"). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the "Cash Amount").

and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 ("Securities Act"). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

¹³ The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

¹⁴ A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

¹⁵ This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

¹⁶ Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

¹⁷ A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

17. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant (defined below), the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;¹⁸ (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.¹⁹

¹⁸ In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

¹⁹ A "custom order" is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

¹¹ The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing is referred to as the "Portfolio Deposit."

¹² The Funds must comply with the federal securities laws in accepting Deposit Instruments

18. Creation Units will consist of specified large aggregations of Shares, *e.g.*, at least 25,000 Shares, and it is expected that the initial price of a Creation Unit will range from \$1 million to \$10 million. All orders to purchase Creation Units must be placed with the Distributor by or through an "Authorized Participant" which is either (1) a "Participating Party," *i.e.*, a broker-dealer or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company ("DTC") ("DTC Participant"), which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

19. Each Business Day, before the open of trading on the Listing Exchange, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange or other major market data provider will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association or other widely disseminated means, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

20. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees ("Transaction Fees") in connection with effecting such purchases or redemptions of Creation Units. With respect to Feeder Funds, the Transaction Fee would be paid indirectly to the Master

Fund.²⁰ In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.²¹ The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

21. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a "Market Maker") and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

22. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.²² The price at which Shares trade will be disciplined by arbitrage opportunities

²⁰ Applicants are not requesting relief from section 18 of the Act. Accordingly, a Master Fund may require a Transaction Fee payment to cover expenses related to purchases or redemptions of the Master Fund's shares by a Feeder Fund only if it requires the same payment for equivalent purchases or redemptions by any other feeder fund. Thus, for example, a Master Fund may require payment of a Transaction Fee by a Feeder Fund for transactions for 20,000 or more shares so long as it requires payment of the same Transaction Fee by all feeder funds for transactions involving 20,000 or more shares.

²¹ Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

²² Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

23. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

24. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a "mutual fund." Instead, each Fund will be marketed as an "ETF." All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration

to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an “open-end company” as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer’s current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only.²³ Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

Section 22(d) of the Act and Rule 22c-1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund’s prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market

will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for the underlying foreign securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption

Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fifteen (15) calendar days.²⁴ Accordingly, with respect to Foreign Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fifteen (15) calendar days following the tender of Creation Units for redemption.²⁵

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fifteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fifteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds, or their respective Master Funds, that do not effect creations and redemptions of Creation Units in-kind.²⁶

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company’s shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company’s voting stock, or if the sale will cause more than 10% of the acquired company’s voting

²⁴ Applicants state that certain countries in which a Fund may invest have historically had settlement periods of up to fifteen (15) calendar days.

²⁵ Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6-1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

²⁶ In addition, the requested exemption from section 22(e) would only apply to in-kind redemptions by the Feeder Funds and would not apply to in-kind redemptions by other feeder funds.

²³ The Master Funds will not require relief from sections 2(a)(32) and 5(a)(1) because the Master Funds will issue individually redeemable securities.

stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts (“UITs”) that are not advised or sponsored by the Adviser and are not part of the same “group of investment companies,” as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as “Investing Management Companies,” such UITs are referred to as “Investing Trusts,” and Investing Management Companies and Investing Trusts are collectively referred to as “Funds of Funds”), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any Broker registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the “Fund of Funds Adviser”) and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a “Fund of Funds Sub-Adviser”). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (“Sponsor”).

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Fund.²⁷ To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds

Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor (“Fund of Funds Advisory Group”) from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (“Fund of Funds Sub-Advisory Group”).

15. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (“Affiliated Underwriting”). An “Underwriting Affiliate” is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not “interested persons” within the meaning of section 2(a)(19) of the Act (“disinterested directors or trustees”), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services

provided under the advisory contract of any Fund, or its respective Master Fund, in which the Investing Management Company may invest. In addition, under condition B.5, a Fund of Funds Adviser, or a Fund of Funds’ trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund, or its respective Master Fund, under rule 12b-1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.²⁸

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund, nor its respective Master Fund, will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund, or its respective Master Fund, to purchase shares of other investment companies for short-term cash management purposes or pursuant to the Master-Feeder Relief. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Fund (“FOF Participation Agreement”). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a

²⁷ A “Fund of Funds Affiliate” is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A “Fund Affiliate” is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

²⁸ Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

FOF Participation Agreement with the Fund of Funds.

19. Applicants also are seeking the Master-Feeder Relief to permit the Feeder Funds to perform creations and redemptions of Shares in-kind in a master-feeder structure. Applicants assert that this structure is substantially identical to traditional master-feeder structures permitted pursuant to the exception provided in section 12(d)(1)(E) of the Act. Section 12(d)(1)(E) provides that the percentage limitations of section 12(d)(1)(A) and (B) shall not apply to a security issued by an investment company (in this case, the shares of the applicable Master Fund) if, among other things, that security is the only investment security held by the investing investment company (in this case, the Feeder Fund). Applicants believe the proposed master-feeder structure complies with section 12(d)(1)(E) because each Feeder Fund will hold only investment securities issued by its corresponding Master Fund; however, the Feeder Funds may receive securities other than securities of its corresponding Master Fund if a Feeder Fund accepts an in-kind creation. To the extent that a Feeder Fund may be deemed to be holding both shares of the Master Fund and other securities, applicants request relief from section 12(d)(1)(A) and (B). The Feeder Funds would operate in compliance with all other provisions of section 12(d)(1)(E).

Sections 17(a)(1) and (2) of the Act

20. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling,

controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an "Affiliated Fund"). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

21. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions "in-kind."

22. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making "in-kind" purchases or "in-kind" redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for "in-kind" purchases of Creation Units and the redemption procedures for "in-kind" redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that "in-kind" purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that "in-kind" purchases and redemptions will be made on terms reasonable to applicants and any affiliated persons because they will be

valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating "in-kind" purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating "in-kind" redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions "in-kind" will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

23. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.²⁹ Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.³⁰ Applicants believe that any proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each

²⁹ Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, a Fund of Funds might seek to transact in Creation Units directly with a Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

³⁰ Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

24. To the extent that a Fund operates in a master-feeder structure, applicants also request relief permitting the Feeder Funds to engage in in-kind creations and redemptions with the applicable Master Fund. Applicants state that the customary section 17(a)(1) and 17(a)(2) relief would not be sufficient to permit such transactions because the Feeder Funds and the applicable Master Fund could also be affiliated by virtue of having the same investment adviser. However, applicants believe that in-kind creations and redemptions between a Feeder Fund and a Master Fund advised by the same investment adviser do not involve "overreaching" by an affiliated person. Such transactions will occur only at the Feeder Fund's proportionate share of the Master Fund's net assets, and the distributed securities will be valued in the same manner as they are valued for the purposes of calculating the applicable Master Fund's NAV. Further, all such transactions will be effected with respect to pre-determined securities and on the same terms with respect to all investors. Finally, such transaction would only occur as a result of, and to effectuate, a creation or redemption transaction between the Feeder Fund and a third-party investor. Applicants believe that the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transactions are consistent with the policy of each Fund and will be consistent with the investment objectives and policies of each Fund of Funds, and the proposed transactions are consistent with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, Shares of such Fund will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing Fund, Long/Short Fund and 130/30 Fund will post on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's, or its respective Master Fund's, Portfolio Holdings.

6. No Adviser or any Sub-Adviser, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for a Fund, or its respective Master Fund, through a transaction in which the Fund, or its respective Master Fund, could not engage directly.

B. Section 12(d)(1) Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund, or its respective Master Fund, within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund, or its respective Master Fund, within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with

respect to a Fund, or its respective Master Fund, for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund, or its respective Master Fund, or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund, or its respective Master Fund, or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, or its respective Master Fund, including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("non-interested Board members"), will determine that any consideration paid by the Fund, or its respective Master Fund, to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund, or its respective Master Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund, or its respective Master Fund, and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received

pursuant to any plan adopted by a Fund, or its respective Master Fund, under rule 12b-1 under the Act) received from a Fund, or its respective Master Fund, by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, or its respective Master Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund, or its respective Master Fund, by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, or its respective Master Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund, or its respective Master Fund, to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, or its respective Master Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund, or its respective Master Fund, in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund, or its respective Master Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable

securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund, or its respective Master Fund, in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund, or its respective Master Fund, will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the Trust will execute a FOF Participation Agreement stating without limitation that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of

the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund, or its respective Master Fund, in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund, or its respective Master Fund, will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent (i) the Fund, or its respective Master Fund, acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund, or its respective Master Fund, to acquire securities of one or more investment companies for short-term cash management purposes or (ii) the Fund acquires securities of the Master Fund pursuant to the Master-Feeder Relief.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-28695 Filed 11-10-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76367; File No. SR-BOX-2015-35]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Business Continuity and Disaster Recovery Plans (“BC/DR plans”) Testing Requirements for Certain Options Participants in Connection With Regulation Systems Compliance and Integrity (“Regulation SCI”)

November 5, 2015.

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 October 26, 2015, BOX Options Exchange LLC (the “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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt business continuity and disaster recovery plans (“BC/DR plans”) testing requirements for certain Options Participants in connection with Regulation SCI. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s Internet Web site at <http://boxexchange.com>.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt BOX Rule 2100 (Mandatory Participation in Testing of Backup Systems) to establish business continuity and disaster recovery plans (“BC/DR plans”) testing requirements for certain Options Participants in connection with Regulation SCI.

As adopted by the Commission, Regulation SCI applies to certain self-regulatory organizations (including the Exchange), alternative trading systems (“ATs”), plan processors, and exempt clearing agencies (collectively, “SCI entities”), and will require these SCI entities to comply with requirements with respect to the automated systems central to the performance of their regulated activities. Among the requirements of Regulation SCI is Rule 1001(a)(2)(v), which requires the Exchange and other SCI entities to maintain “[b]usiness continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption.”³ The Exchange takes pride in the reliability and availability of its systems. Historically, Exchange systems have been up and available more than 99.9% of the time; yet as a precaution, the Exchange has put extensive time and resources toward planning for system failures and already maintains robust BC/DR plans consistent with the Rule. As set forth below, in connection with Regulation SCI, the Exchange is proposing to require certain Members to participate in testing of the operation of the Exchange’s BC/DR plans.

With respect to an SCI entity’s BC/DR plans, including its backup systems, paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to: “[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.”⁴ Paragraph (b) of Rule 1004 further requires each SCI entity to “[d]esignate members or participants pursuant to the standards established in

paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months.”⁵ In order to comply with Rule 1004 of Regulation SCI, the Exchange proposes to adopt Rule 2100, governing mandatory participation in testing of Exchange backup systems, as described below.

First, in paragraph (a) of Rule 2100, the Exchange proposes to include language from paragraph (a) of Rule 1004 of Regulation SCI to summarize the Exchange’s obligation pursuant to such rule. Specifically, the Exchange proposes to state that “[p]ursuant to Regulation SCI and with respect to the Exchange’s business continuity and disaster recovery plans, including its backup systems, the Exchange is required to establish standards for the designation of Members that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.” The Exchange further proposes that paragraph (a) indicate that the “Exchange has established standards and will designate Participants according to those standards” as set forth in the proposed Rule. In addition, the Exchange proposes to make clear that all Members are permitted to connect to the Exchange’s backup systems as well as to participate in testing of such systems. Proposed paragraph (a) is consistent with the Commission’s adoption of Regulation SCI, which encouraged “SCI entities to permit non-designated members or participants to participate in the testing of the SCI entity’s BC/DR plans if they request to do so.”⁶

Second, in paragraph (b) of Rule 2100, the Exchange proposes to specify that it shall designate those BOX Participants that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of the Exchange’s business continuity and disaster recovery plans (“Designated BCP/DR Participants”). Designated BCP/DR Participants will be identified based on criteria determined by the Exchange and announced via Regulatory Circular, which may include the amount of volume transacted by the Participant in

⁵ 17 CFR 242.1004(b).

⁶ See SCI Adopting Release, supra note 4[*sic*] at 72350.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 242.1001(a)(2)(v).

⁴ 17 CFR 242.1004(a).

a class or on the Exchange in general, operational capacity, trading experience, and historical contribution to fair and orderly markets on the Exchange. Designated BCP/DR Participants will participate in functional and performance testing in the manner and frequency specified by the Exchange, which shall not be less than once every 12 months.

The Exchange notes that it encourages all Participants to connect to the Exchange's backup systems and to participate in testing of such systems. In fact, the Exchange provides connectivity free of charge to all Participants that connect to Exchange backup systems in order to help reduce the economic burden of maintaining connectivity to Exchange backup systems. However, in adopting the requirements of Rule 2100(b) the Exchange intends to subject to the Rule only those Participants that the Exchange believes are necessary to maintain fair and orderly markets at the Exchange.

In addition to paragraphs (a) and (b) described above, the Exchange also proposes to adopt Interpretive Material IM-2100-1, which would provide additional detail regarding the notice that will be provided to Participants that have been designated pursuant to subparagraph (b). As proposed, IM-2100-1 would state that Designated BCP/DR Participants will be identified based on criteria determined by the Exchange, consistent with proposed paragraph (b)(1), and announced via Regulatory Circular. Any changes to the standards by which a market participant might be determined to be a Designated BCP/DR Participant would be applied prospectively with reasonable advance notice as announced via Regulatory Circular. The Exchange would first announce the criteria by which market participants would be determined to be Designated BCP/DR Participants by November 3, 2015. The Exchange believes the proposed notice requirements are necessary to provide Participants with proper advance notice in the event they become subject to proposed Rule 2100(b). The proposed timeframes would also provide Participants with adequate time to become compliant with such Rule due to the necessary infrastructure changes it may take to connect to the Exchange's backup systems for a Participant that is not already connected.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the

“Act”),⁷ in general, and Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the proposal will ensure that the Participants necessary to ensure the maintenance of a fair and orderly market are properly designated consistent with Rule 1004 of Regulation SCI. Specifically, the proposal will adopt criteria with respect to the designation of Participants that are required to participate in the testing of the Exchange's BC/DR plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release, “SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.”⁹ The Exchange believes that this proposal is consistent with such authority and legal responsibility.

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. In this regard and as indicated above, the Exchange notes that the proposal is not a competitive proposal but rather is necessary for the Exchange's compliance with Regulation SCI, and is also consistent with a recent filings submitted by BATS and the CBOE.¹⁰

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See SCI Adopting Release, supra note 4 at 72350.

¹⁰ See Securities Exchange Act Release Nos. 76162 (October 15, 2015), 80 FR 63849 (October 21, 2015) (SR-BATS-2015-86); 76203 (October 20,

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)(iii) thereunder.¹² Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹³ A proposed rule change filed under Rule 19b-4(f)(6)(iii)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to incorporate changes required under Regulation SCI, such as establishing standards for designating BC/DR participants, prior to the November 3, 2015 compliance date. Accordingly, the Commission designates the proposed rule change to be operative upon filing.¹⁶

2015), 80 FR 65263 (October 20, 2015) (SR-CBOE-2015-088).

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 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 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.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BOX-2015-35 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-BOX-2015-35. 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments

efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2015-35 and should be submitted on or before December 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-28687 Filed 11-10-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31897; 812-14507]

Good Hill Partners LP and Good Hill ETF Trust; Notice of Application

November 6, 2015.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

APPLICANTS: Good Hill Partners LP ("Good Hill Partners") and Good Hill ETF Trust (the "Trust").

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; and (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units.

FILING DATES: The application was filed on June 30, 2015 and amended on October 16, 2015.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may

request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 1, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants, 1599 Post Road East, Westport, CT 06880.

FOR FURTHER INFORMATION CONTACT: Kay-Mario Vobis, Senior Counsel, at (202) 551-6728, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Trust, a business trust organized under the laws of Massachusetts, intends to register with the Commission as an open-end management investment company. The applicants are requesting relief not only for the Trust and its initial series, Good Hill Short Duration Actively Managed ETF ("Initial Fund"), but also with respect to future series of the Trust, and to any registered open-end management investment companies or series thereof that may be created in the future and that utilizes active management investment strategies ("Future Funds" and collectively with the Initial Fund, the "Funds").¹ Funds may invest in equity securities or fixed income securities traded in the U.S. or non-U.S. markets or a combination of equity and

¹ All entities that currently intend to rely on the requested order are named as applicants and any Fund that currently intends to rely on the requested order is identified in the application. Any other entity that relies on the requested order in the future will comply with the terms and conditions of the application.

¹⁷ 17 CFR 200.30-3(a)(12).

fixed income securities, including “to-be-announced transactions” (“TBA Transactions”)² and depository receipts (“Depository Receipts”).³ The securities, other assets, and other positions in which a Fund invests are its “Portfolio Positions.”⁴ The Trust currently expects that the Initial Fund’s investment objective will be to seek total return by investing, under normal market conditions, at least 80% of its net assets in a portfolio of short duration fixed income securities.

2. Each Fund will (a) be advised by Good Hill Partners or an entity controlling, controlled by or under common control with Good Hill Partners (each such entity and any successor thereto, an “Adviser”)⁵ and (b) comply with the terms and conditions stated in the application. Good Hill Partners is a Delaware limited partnership and is registered as an investment adviser under the Investment Advisers Act of 1940 (the “Advisers Act”). Any other Adviser to a Fund will be registered under the Advisers Act. The Adviser may retain sub-advisers (each, a “Fund Sub-Adviser”) in connection with the Funds;

² A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

³ Depository Receipts include American Depository Receipts (“ADRs”) and Global Depository Receipts (“GDRs”). With respect to ADRs, the depository is typically a U.S. financial institution and the underlying securities are issued by a foreign issuer. The ADR is registered under the Securities Act of 1933 (“Securities Act”) on Form F-6. ADR trades occur either on a national securities exchange as defined in section 2(a)(26) of the Act (“Listing Exchange”) or off-exchange. Financial Industry Regulatory Authority Rule 6620 requires all off-exchange transactions in ADRs to be reported within 90 seconds and ADR trade reports to be disseminated on a real-time basis. With respect to GDRs, the depository may be a foreign or a U.S. entity, and the underlying securities may have a foreign or a U.S. issuer. All GDRs are sponsored and trade on a foreign exchange. No affiliated persons of applicants, any Adviser (as defined below), Fund Sub-Adviser (as defined below), or Fund will serve as the depository for any Depository Receipts held by a Fund. A Fund will not invest in any Depository Receipts that the Adviser (or, if applicable, the Fund Sub-Adviser) deems to be illiquid or for which pricing information is not readily available.

⁴ If a Fund invests in derivatives: (a) The Fund’s board of trustees periodically will review and approve (i) the Fund’s use of derivatives and (ii) how the Fund’s investment adviser assesses and manages risk with respect to the Fund’s use of derivatives; and (b) the Fund’s disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

⁵ For the purposes of the requested order, a “successor” is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

each Fund Sub-Adviser will be registered under the Advisers Act or not subject to such registration.

3. The Trust will enter into a distribution agreement with one or more distributors (“Distributor”). Each Distributor will be registered under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and will act as Distributor and principal underwriter of the Funds. No Distributor will be affiliated with the Listing Exchange. The Distributor of any Fund may be an “affiliated person” or an affiliated person of an affiliated person of the Fund’s Adviser or Fund Sub-Adviser.

4. Shares of each Fund will be purchased from the Trust only in large aggregations of a specified number referred to as “Creation Units.” Creation Units may be purchased through orders placed with the Distributor by or through an “Authorized Participant” which is either (a) a broker-dealer or other participant in the Continuous Net Settlement (“CNS”) System of the National Securities Clearing Corporation (“NSCC”), a clearing agency that is registered with the Commission, or (b) a participant (“DTC Participant”) in the Depository Trust Company (“DTC”), and which in either case has executed a participant agreement with the Distributor with respect to the creation and redemption of Creation Units. Purchases and redemptions of the Funds’ Creation Units will be processed either through an enhanced clearing process available to DTC Participants that are also participants in the CNS system of the NSCC (the “NSCC Process”) or through a manual clearing process that is available to all DTC Participants (the “DTC Process”).

5. In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (“Deposit Instruments”), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (“Redemption Instruments”).⁶ On any given Business

⁶ The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act. In accepting Deposit Instruments and satisfying redemptions with

Day,⁷ the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the “Creation Basket.” In addition, the Creation Basket will correspond pro rata to the positions in a Fund’s portfolio (including cash positions),⁸ except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;⁹ or (c) TBA Transactions, short positions, and other positions that cannot be transferred in kind¹⁰ will be excluded from the Creation Basket.¹¹ If there is a difference between the net asset value (“NAV”) attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the “Balancing Amount”).

6. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Balancing Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made

Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

⁷ Each Fund will sell and redeem Creation Units on any day the Fund is open, including as required by section 22(e) of the Act (each, a “Business Day”).

⁸ The portfolio used for this purpose will be the same portfolio used to calculate the Fund’s NAV for that Business Day.

⁹ A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

¹⁰ This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

¹¹ Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Balancing Amount (defined below).

entirely in cash;¹² (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC Process or DTC Process; or (ii) in the case of Funds holding non-U.S. investments (“Global Funds”), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.¹³

7. Each Business Day, before the open of trading on the Listing Exchange, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Balancing Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Listing Exchange or a major market data vendor will disseminate every 15 seconds throughout the trading day an amount representing the Fund’s

¹² In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser’s size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax considerations may warrant in-kind redemptions.

¹³ A “custom order” is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

estimated NAV, which will be the value of the Fund’s Portfolio Positions, on a per Share basis.

8. An investor purchasing or redeeming a Creation Unit will be charged a fee (“Transaction Fee”) to protect continuing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.¹⁴ The Distributor will deliver a confirmation and Fund prospectus (“Prospectus”) to the purchaser. In addition, the Distributor will maintain records of both the orders placed with it and the confirmations of acceptance furnished by it.

9. Beneficial owners of Shares may sell their Shares in the secondary market. Shares will be listed on a Listing Exchange and traded in the secondary market in the same manner as other equity securities. Applicants state that it is expected that one or more specialists or market makers (collectively, “Exchange Market Makers”) will be assigned for the Shares of each Fund. The price of Shares trading on the Listing Exchange will be based on a current bid/offer market. Transactions involving the sale of Shares on the Listing Exchange will be subject to customary brokerage commissions and charges.

10. Applicants expect that purchasers of Creation Units will include arbitrageurs and that Exchange Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.¹⁵ Applicants expect that secondary market purchasers of Shares will include both

¹⁴ Where a Fund permits an in-kind purchaser to deposit cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

¹⁵ If Shares are listed on The NASDAQ Stock Market LLC (“Nasdaq”) or a similar electronic Listing Exchange (including NYSE Arca), one or more member firms of that Listing Exchange will act as Exchange Market Maker and maintain a market for Shares trading on that Listing Exchange. On Nasdaq, no particular Exchange Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, for example, stipulate that at least two Exchange Market Makers must be registered in Shares to maintain a listing. In addition, on Nasdaq and NYSE Arca, registered Exchange Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Exchange Market Maker will be an affiliated person or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares as discussed below.

institutional investors and retail investors.¹⁶ Applicants state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

11. Neither the Trust nor any Fund will be advertised or marketed as a conventional open-end investment company or mutual fund. Instead, each Fund will be marketed as an “actively-managed exchange-traded fund.” Any advertising material that describes the features of obtaining, buying or selling Creation Units, or buying or selling Shares on the Listing Exchange, or where there is reference to redeemability, will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

12. The Funds’ Web site, which will be publicly available prior to the public offering of Shares, will include, or will include links to, each Fund’s current Prospectus which may be downloaded. That Web site, which will be publicly available at no charge, will also contain, on a per Share basis for each Fund, the prior Business Day’s NAV and the market closing price or the mid-point of the bid/ask spread at the time of calculation of such NAV (the “Bid/Ask Price”), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Listing Exchange, each Fund will also disclose on its Web site the identities and quantities of its Portfolio Positions held by the Fund that will form the basis for the Fund’s calculation of NAV at the end of the Business Day.¹⁷

Applicants’ Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

¹⁶ Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. DTC or DTC Participants will maintain records of beneficial ownership of Shares.

¹⁷ Under accounting procedures followed by the Funds, trades made on the prior Business Day (“T”) will be booked and reflected in NAV on the current Business Day (“T+1”). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an “open-end company” as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer’s current net assets, or the cash equivalent. Applicants request an order to permit the Trust to register as an open-end management investment company and redeem Shares in Creation Units only. Applicants state that each investor is entitled to purchase or redeem Creation Units rather than trade the individual Shares in the secondary market. Applicants further state that because of the arbitrage possibilities created by the redeemability of Creation Units, it is expected that the market price of an individual Share will not vary materially from its NAV.

Section 22(d) of the Act and Rule 22c-1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at

negotiated prices, rather than at the current offering price described in the Fund’s Prospectus. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been intended (a) to prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) to prevent unjust discrimination or preferential treatment among buyers, and (c) to ensure an orderly distribution of shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants state that (a) secondary market transactions in Shares would not cause dilution for owners of such Shares because such transactions do not involve the Trust or Funds as parties, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains immaterial.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions of Creation Units of Global Funds will be contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles in foreign markets in which those Funds invest. Applicants assert that, under certain circumstances, the delivery cycles for transferring Portfolio Positions to redeeming investors, coupled with local market holiday schedules, may require a

delivery process of up to 15 calendar days. Applicants therefore request relief from section 22(e) in order for each Global Fund to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local market(s) where transactions in its Portfolio Positions customarily clear and settle, but in any event, within a period not to exceed fifteen calendar days.¹⁸

8. Applicants submit that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Global Fund to be made within 15 calendar days would not be inconsistent with the spirit and intent of section 22(e).¹⁹ Applicants state that each Global Fund’s statement of additional information (“SAI”) will disclose those local holidays (over the period of at least one year following the date of the SAI, if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days, up to 15 calendar days, needed to deliver the proceeds for that Global Fund. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect redemptions of Creation Units in kind.

Sections 17(a)(1) and (2) of the Act

9. Section 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person (“second tier affiliate”), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines “affiliated person” to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines “control” of a fund as “the power to exercise a controlling influence over the management or policies” of the fund and provides that a control relationship will be presumed

¹⁸ Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that they may otherwise have under rule 15c6-1 under the Exchange Act, which requires that most securities transactions be settled within three business days of the trade date.

¹⁹ Certain countries in which a Global Fund may invest have historically had settlement periods of up to 15 calendar days.

where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by an Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser (an "Affiliated Fund").

10. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b) to permit in-kind purchases and redemptions of Creation Units from the Funds by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or more than 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

11. Applicants assert that no useful purpose would be served by prohibiting the affiliated persons described above from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be effected in exactly the same manner for all purchases and redemptions. The valuation of the Deposit Instruments and Redemption Instruments will be made in the same manner, and in the same manner as the Fund's Portfolio Positions, regardless of the identity of the purchaser or redeemer. Except with respect to cash determined in accordance with the procedures described in section I.G.1. of the application, Deposit Instruments and Redemption Instruments will be the same for all purchasers and redeemers. Therefore, applicants state that the in-kind purchases and redemptions will afford no opportunity for the specified affiliated persons of a Fund to effect a transaction detrimental to other holders of Shares of that Fund. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

Applicant's Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. As long as the Funds operate in reliance on the requested order, the Shares of the Funds will be listed on a Listing Exchange.
2. Neither the Trust nor any Fund will be advertised or marketed as an open-

end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain on a per Share basis, for each Fund, the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Listing Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Positions held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Adviser or any Fund Sub-Adviser, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed exchange-traded funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,
Secretary.

[FR Doc. 2015-28796 Filed 11-10-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31894; File No. 812-14499]

Pointbreak Advisers LLC, et al.; Notice of Application

November 5, 2015.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under

sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

Summary of Application: Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to be effected at negotiated market prices rather than at net asset value ("NAV"); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to perform creations and redemptions of Creation Units in-kind in a master-feeder structure.

Applicants: Pointbreak Advisers LLC (formerly, BetaClone Advisers LLC) (the "Initial Adviser"), Pointbreak ETF Trust (formerly, BetaClone ETF Trust) (the "Trust"), and ALPS Distributors, Inc. (the "Initial Distributor").

Filing Dates: The application was filed on June 29, 2015, and amended on October 15, 2015.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 30, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: The Initial Adviser and the

Trust, P.O. Box 347312, San Francisco, CA 94134; The Distributor, 1290 Broadway, Suite 1100, Denver, CO 80203.

FOR FURTHER INFORMATION CONTACT: Kyle R. Ahlgren, Senior Counsel at (202) 551-6857, or Holly L. Hunter-Ceci, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust. The Trust is registered under the Act as a series open-end management investment company.

2. The Initial Adviser is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act") and will be the investment adviser to Pointbreak Buyback Index Fund (the "Initial Fund"). Any other Adviser (defined below) will also be registered as an investment adviser under the Advisers Act. Each Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds, or their respective Master Funds, (each, a "Sub-Adviser"). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The distributor for the Initial Funds will act as distributor and principal underwriter of one or more of the Funds. The distributor of any Fund may be an affiliated person, as defined in section 2(a)(3) of the Act ("Affiliated Person"), or an affiliated person of an Affiliated Person ("Second-Tier Affiliate"), of that Fund's Adviser and/or Sub-Advisers. No distributor will be affiliated with any Exchange (defined below).

4. Applicants request that the order apply to the Initial Fund and any additional series of the Trust, and any other open-end management investment company or series thereof, that may be created in the future that operate as an exchanged-traded fund ("ETF") and that track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an "Underlying Index") (together, the "Future Funds"). Any Future Fund will (a) be advised by

the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an "Adviser") and (b) comply with the terms and conditions of the application. The Initial Funds and Future Funds, together, are the "Funds."¹

5. Applicants state that a Fund may operate as a feeder fund in a master-feeder structure ("Feeder Fund"). Applicants request that the order permit a Feeder Fund to acquire shares of another registered investment company in the same group of investment companies having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the limitations in section 12(d)(1)(A) of the Act and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B) of the Act ("Master-Feeder Relief"). Applicants may structure certain Feeder Funds to generate economies of scale and incur lower overhead costs.² There would be no ability by Fund shareholders to exchange Shares of Feeder Funds for shares of another feeder series of the Master Fund.

6. Each Fund, or its respective Master Fund, will hold certain securities, currencies, other assets and other investment positions ("Portfolio Holdings") selected to correspond generally to the performance of its Underlying Index. Certain of the Funds will be based on Underlying Indexes which will be comprised of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) Domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes that will be comprised solely of foreign and domestic or solely foreign equity and/or fixed income securities ("Foreign Funds").

¹ Applicants represent that all existing entities that intend to rely on the requested order have been named as applicants, and that any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. Applicants acknowledge that a Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

² Applicants acknowledge that operating in a master-feeder structure could also impose costs on a Feeder Fund and reduce its tax efficiency. Applicants represent that the Feeder Fund's Board will consider any such potential disadvantages against the benefits of economies of scale and other benefits of operating within a master-feeder structure. In a master-feeder structure, the Master Fund—rather than the Feeder Fund—would generally invest its portfolio in compliance with the requested order.

7. Applicants represent that each Fund, or its respective Master Fund, will invest at least 80% of its assets, exclusive of collateral held from securities lending, in the component securities of its respective Underlying Index ("Component Securities") and TBA Transactions,³ and in the case of Foreign Funds, Component Securities and Depository Receipts⁴ representing Component Securities. Each Fund, or its respective Master Fund, may also invest up to 20% of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash and cash equivalents, other investment companies, as well as in securities and other instruments not included in its Underlying Index but which the applicable Adviser believes will help the Fund, or its respective Master Fund, track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

8. Future Funds may seek to track Underlying Indexes constructed using 130/30 investment strategies ("130/30 Funds") or other long/short investment strategies ("Long/Short Funds"). Each Long/Short Fund will establish (i) Exposures equal to approximately 100% of the long positions specified by the Long/Short Index⁵ and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will establish: (i) Exposures to long positions in Component Securities equal in value to approximately 130% of total net assets; and (ii) exposures to short positions in Component Securities equal

³ A "to-be-announced transaction" or "TBA Transaction" is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

⁴ Depository receipts representing foreign securities ("Depository Receipts") include American Depository Receipts and Global Depository Receipts. The Funds, or their respective Master Funds, may invest in Depository Receipts representing foreign securities in which they seek to invest. Depository Receipts are typically issued by a financial institution (a "depository bank") and evidence ownership interests in a security or a pool of securities that have been deposited with the depository bank. Applicants represent that a Fund, or its respective Master Fund, will not invest in any Depository Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available, and that no affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depository bank for any Depository Receipts held by a Fund, or its respective Master Fund.

⁵ Underlying Indexes that include both long and short positions in securities are referred to as "Long/Short Indexes."

in value to approximately 30% of total net assets. At the end of each Business Day, the applicable Adviser for each Long/Short Fund and 130/30 Fund will provide full portfolio transparency on its Web site (“Web site”) by making available the identities and quantities of the Portfolio Holdings. In addition, with respect to each Self-Indexing Fund (defined below), Long/Short Fund and 130/30 Fund, the Web site will contain, each Business Day before the commencement of trading of Shares on the Exchange (defined below),⁶ the identities and quantities of the portfolio securities and other assets held by each such Fund, or its respective Master Fund, that will form the basis for such Fund’s calculation of NAV at the end of the Business Day. The information provided on the Web site will be formatted to be reader-friendly.

9. A Fund, or its respective Master Fund, will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund, or its respective Master Fund, using a replication strategy will invest in the Component Securities in its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund, or its respective Master Fund, using a representative sampling strategy will hold some, but not necessarily all of the Component Securities in its Underlying Index. Applicants state that a Fund, or its respective Master Fund, using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that the returns of each Fund will have an annual tracking error of less than 5% relative to its Underlying Index.

10. Each Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains an Underlying Index (each, an “Index Provider”) or a sub-licensing arrangement with the applicable Adviser, which will have a licensing agreement with such Index Provider.⁷ A

⁶ Under accounting procedures followed by each Fund, trades made on the prior Business Day (“T”) will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

⁷ The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (or in case of a sub-licensing agreement, the

“Self-Indexing Fund”) is a Fund for which an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of the Advisers, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an “Affiliated Index Provider”) will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an “Affiliated Index”).⁸ Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of an Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

11. Applicants recognize that Self-Indexing Funds could raise concerns regarding the potential ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who may have access to or knowledge of changes to an Underlying Index’s composition methodology or the constituent securities in an Underlying Index prior to the time that information is publicly disseminated.

12. Applicants propose that each day that the NYSE, the national securities exchange (as defined in section 2(a)(26) of the Act) (an “Exchange”) on which the Fund’s Shares are primarily listed (“Listing Exchange”) are open for business, including any day that a Self-Indexing Fund is required to be open under section 22(e) of the Act (a “Business Day”), each Self-Indexing Fund will post on its Web site, before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the Portfolio Holdings that

Adviser) must provide the use of the Underlying Indexes and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

⁸ The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be “investment companies” in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser (“Affiliated Accounts”) as well other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser (“Unaffiliated Accounts”). The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index.

Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

will form the basis for the Self-Indexing Fund’s calculation of NAV at the end of the Business Day. Applicants believe that requiring Self-Indexing Funds, and their respective Master Funds, to maintain full portfolio transparency will provide an effective alternative mechanism for addressing any such potential conflicts of interest.

13. Applicants do not believe the potential for conflicts of interest raised by an Adviser’s use of the Underlying Indexes in connection with the management of the Self-Indexing Funds, their respective Master Funds, and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Applicants contend that both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.⁹

14. Each Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds, their respective Master Funds, and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, the Initial Adviser has adopted policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the Adviser or an associated person (“Inside Information Policy”). Any other Adviser and/or Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics¹⁰ and Inside Information Policy of each Adviser and Sub-Adviser,

⁹ In this regard, applicants cite Rule 17j–1 under the Act and Section 204A under the Advisers Act and Rules 204A–1 and 206(4)–7 under the Advisers Act.

¹⁰ Applicants represent that each Adviser has also adopted or will adopt a code of ethics pursuant to Rule 17j–1 under the Act and Rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in Rule 17j–1) from engaging in any conduct prohibited in Rule 17j–1 (“Code of Ethics”).

personnel of those entities with knowledge about the composition of the Portfolio Deposit¹¹ will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by the Index Provider. If the requested order is granted, the Adviser will include under Item 10.C. of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

15. To the extent the Self-Indexing Funds or their respective Master Funds transact with an Affiliated Person of an Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees ("Board") will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, an Adviser, Affiliated Persons of the Adviser ("Adviser Affiliates") and Affiliated Persons of any Sub-Adviser ("Sub-Adviser Affiliates") may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by an Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission.

16. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and shareholders redeeming their Shares

will receive an in-kind transfer of specified instruments ("Redemption Instruments").¹² On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions)¹³ except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;¹⁴ (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind¹⁵ will be excluded from the Deposit Instruments and the Redemption Instruments;¹⁶ (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;¹⁷ or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a "Rebalancing"). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or

¹² Applicants acknowledge that the Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 ("Securities Act"). Applicants further acknowledge that in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

¹³ The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

¹⁴ A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

¹⁵ This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

¹⁶ Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

¹⁷ A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants (as defined below) on a given Business Day.

Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the "Cash Amount").

17. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made *entirely in cash*; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made *entirely in cash*;¹⁸ (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash *in lieu* of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash *in lieu* of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax

¹⁸ In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

¹¹ The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing is referred to as the "Portfolio Deposit."

treatment if the holder receives redemption proceeds in kind.¹⁹

18. Creation Units will consist of specified large aggregations of Shares, e.g., at least 20,000 Shares, and it is expected that the initial price of a Creation Unit will range from \$1 million to \$10 million, and that the initial trading price per individual Share of each Fund will fall in the range of \$15 to \$100. All orders to purchase Shares of a Fund in Creation Units must be placed with the Distributor by or through an "Authorized Participant" which is either (1) a "Participating Party," i.e., a broker-dealer or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC"), a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company ("DTC") ("DTC Participant"), which, in either case, will sign a "Participant Agreement" with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

19. Each Business Day, before the open of trading on the Listing Exchange, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange or other major market data provider will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association or other widely disseminated means, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

20. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the

Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees ("Transaction Fees") in connection with effecting such purchases or redemptions of Creation Units. With respect to Feeder Funds, the Transaction Fee would be paid indirectly to the Master Fund.²⁰ In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.²¹ The Distributor will be responsible for delivering the Fund's prospectus to those persons purchasing Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

21. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as market makers (each, a "Market Maker") and maintain a market for Shares trading on the Exchange. The price of Shares trading on an Exchange will be based on a current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

22. Applicants expect that purchasers of Creation Units will include, among others, institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary

²⁰ Applicants are not requesting relief from section 18 of the Act. Accordingly, a Master Fund may require a Transaction Fee payment to cover expenses related to purchases or redemptions of the Master Fund's shares by a Feeder Fund only if it requires the same payment for equivalent purchases or redemptions by any other feeder fund. Thus, for example, a Master Fund may require payment of a Transaction Fee by a Feeder Fund for transactions for 20,000 or more shares so long as it requires payment of the same Transaction Fee by all feeder funds for transactions involving 20,000 or more shares.

²¹ Where a Fund permits an "in-kind" purchaser to substitute cash in lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

market purchasers of Shares will include both institutional and retail investors.²² The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

23. Shares are not individually redeemable; owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund in Creation Units only. To redeem through the applicable Fund, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. A redeeming investor will pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

24. Neither the Trust nor any of its individual Funds will be advertised or marketed or otherwise "held out" as a traditional open-end investment company or a "mutual fund." Instead, each such Fund will be marketed as an "ETF." All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such

²² Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

¹⁹ A "custom order" is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(j) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only.²³ Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

Section 22(d) of the Act and Rule 22c-1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the

Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of

a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for the underlying foreign securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fifteen (15) calendar days.²⁴ Accordingly, with respect to Foreign Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fifteen (15) calendar days following the tender of Creation Units for redemption.²⁵

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fifteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fifteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.²⁶

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end

²⁴ Certain countries in which a Fund may invest have historically had settlement periods of up to fifteen (15) calendar days.

²⁵ Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6-1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

²⁶ In addition, the requested exemption from section 22(e) would only apply to in-kind redemptions by the Feeder Funds and would not apply to in-kind redemptions by other feeder funds.

²³ The Master Funds will not require relief from sections 2(a)(32) and 5(a)(1) because the Master Funds will issue individually redeemable securities.

investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts ("UITs") that are not advised or sponsored by the Advisers and are not part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as "Investing Management Companies," such UITs are referred to as "Investing Trusts," and Investing Management Companies and Investing Trusts are collectively referred to as "Funds of Funds"), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any Broker registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the "Fund of Funds Adviser") and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a "Fund of Funds Sub-Adviser"). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor ("Sponsor").

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Fund.²⁷ To limit the

control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor ("Fund of Funds' Advisory Group") from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser ("Fund of Funds' Sub-Advisory Group").

15. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of

directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("disinterested directors or trustees"), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund, or its respective Master Fund, in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund, or its respective Master Fund, under rule 12b-1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.²⁸

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund, nor its respective Master Fund, will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund, or its respective Master Fund, to purchase shares of other investment companies for short-term cash management purposes or pursuant to the Master-Feeder Relief. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Fund ("FOF Participation Agreement"). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

²⁷ A "Fund of Funds Affiliate" is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A "Fund Affiliate" is an investment adviser,

promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

²⁸ Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

19. Applicants also are seeking the Master-Feeder Relief to permit the Feeder Funds to perform creations and redemptions of Shares in-kind in a master-feeder structure. Applicants assert that this structure is substantially identical to traditional master-feeder structures permitted pursuant to the exception provided in section 12(d)(1)(E) of the Act. Section 12(d)(1)(E) provides that the percentage limitations of section 12(d)(1)(A) and (B) shall not apply to a security issued by an investment company (in this case, the shares of the applicable Master Fund) if, among other things, that security is the only investment security held by the investing investment company (in this case, the Feeder Fund). Applicants believe the proposed master-feeder structure complies with section 12(d)(1)(E) because each Feeder Fund will hold only investment securities issued by its corresponding Master Fund; however, the Feeder Funds may receive securities other than securities of its corresponding Master Fund if a Feeder Fund accepts an in-kind creation. To the extent that a Feeder Fund may be deemed to be holding both shares of the Master Fund and other securities, applicants request relief from section 12(d)(1)(A) and (B). The Feeder Funds would operate in compliance with all other provisions of section 12(d)(1)(E).

Sections 17(a)(1) and 17(a)(2) of the Act

20. Sections 17(a)(1) and 17(a)(2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under

common control with the other person. Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by an Adviser or an entity controlling, controlled by or under common control with an Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an "Affiliated Fund"). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

21. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions "in-kind."

22. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making "in-kind" purchases or "in-kind" redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for "in-kind" purchases of Creation Units and the redemption procedures for "in-kind" redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer.

Applicants do not believe that "in-kind" purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that "in-kind" purchases and redemptions will be made on terms reasonable to applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating "in-kind" purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating "in-kind" redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions "in-kind" will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

23. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.²⁹ Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the

²⁹ Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, a Fund of Funds might seek to transact in Creation Units directly with a Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

Fund.³⁰ Applicants believe that any proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

24. To the extent that a Fund operates in a master-feeder structure, applicants also request relief permitting the Feeder Funds to engage in in-kind creations and redemptions with the applicable Master Fund. Applicants state that the customary section 17(a)(1) and 17(a)(2) relief would not be sufficient to permit such transactions because the Feeder Funds and the applicable Master Fund could also be affiliated by virtue of having the same investment adviser. However, applicants believe that in-kind creations and redemptions between a Feeder Fund and a Master Fund advised by the same investment adviser do not involve "overreaching" by an affiliated person. Such transactions will occur only at the Feeder Fund's proportionate share of the Master Fund's net assets, and the distributed securities will be valued in the same manner as they are valued for the purposes of calculating the applicable Master Fund's NAV. Further, all such transactions will be effected with respect to pre-determined securities and on the same terms with respect to all investors. Finally, such transaction would only occur as a result of, and to effectuate, a creation or redemption transaction between the Feeder Fund and a third-party investor. Applicants believe that the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transactions are consistent with the policy of each Fund and will be consistent with the investment objectives and policies of each Fund of Funds, and the proposed

³⁰ Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

transactions are consistent with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief, other than the section 12(d)(1) Relief and the section 17 relief related to a master-feeder structure, will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. Each Fund's Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for the Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing, Long/Short and 130/30 Fund will post on its Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's, or its respective Master Fund's, Portfolio Holdings.

6. Neither Adviser nor any Sub-Adviser to a Self-Indexing Fund, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Self-Indexing Fund) to acquire any Deposit Instrument for a Self-Indexing Fund, or its respective Master Fund, through a transaction in which the Self-Indexing Fund, or its respective Master Fund, could not engage directly.

B. Section 12(d)(1) Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund, or its respective Master Fund,

within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund, or its respective Master Fund, within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund, or its respective Master Fund, for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund, or its respective Master Fund, or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund, or its respective Master Fund, or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, or its respective Master Fund, including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("non-interested Board members"), will determine that any consideration paid by the Fund, or its respective Master Fund, to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund, or its respective Master Fund; (ii)

is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund, or its respective Master Fund, and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund, or its respective Master Fund, under rule 12b-1 under the Act) received from a Fund, or its respective Master Fund, by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, or its respective Master Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund, or its respective Master Fund, by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, or its respective Master Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund, or its respective Master Fund, to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, or its respective Master Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by a Fund, or its respective Master Fund, in an Affiliated

Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund, or its respective Master Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund, or its respective Master Fund, in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund, or its respective Master Fund, will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the Trust will execute a FOF Participation Agreement stating without limitation that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and

conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund, or its respective Master Fund, in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund, or its respective Master Fund, will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent (i) the Fund, or its respective Master Fund, acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund, or its respective Master Fund, to acquire securities of one or more investment companies for short-term cash management purposes or (ii) the Fund acquires securities of the Master Fund pursuant to the Master-Feeder Relief.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-28677 Filed 11-10-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76359; File No. SR-FINRA-2015-032]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) To Reduce the Waiting Period for the Release of Information Reported on Form U5

November 5, 2015.

I. Introduction

On September 14, 2015, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to reduce the 15-day waiting period for the release of information reported on Form U5 (Uniform Termination Notice for Securities Industry Registration) through BrokerCheck. The proposed rule change was published for comment in the **Federal Register** on October 1, 2015.³ The Commission received two comment letters on the proposed rule change.⁴ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

BrokerCheck provides the public with information on the professional background, business practices, and conduct of FINRA members and their associated persons. The information that FINRA releases through BrokerCheck is derived from the Central Registration Depository (“CRD”), the securities industry online registration and licensing database. FINRA member firms, their associated persons and regulators report information to the CRD system via the uniform registration forms.⁵

Rule 8312 governs the information that FINRA releases to the public through BrokerCheck. Pursuant to this rule, most of the information that FINRA releases through BrokerCheck is made available the day after it is filed with the CRD system.⁶ Rule 8312(d)(5), however, prohibits FINRA from releasing Form U5 information for 15 days following the filing of such information. According to FINRA, this 15-day waiting period was established to give brokers on whose behalf the Form U5 was submitted an opportunity to comment on the disclosure event either through a Form U4, or by submitting a comment directly to FINRA to be included on BrokerCheck.⁷

FINRA has proposed to shorten this 15-day waiting period for the release of Form U5 disclosure information. Specifically, the proposed rule change will amend Rule 8312(d)(5) to provide that FINRA shall not release events reported on Section 7 of Form U5 (other than “Internal Review Disclosure” events) for three business days after FINRA’s processing⁸ of the filing.⁹ However, if an event is reported on Form U5 and the same event is thereafter reported on Form U4 before the three-business-day period expires, FINRA will release the Forms U4 and U5 information simultaneously upon processing; this three-business-day period may be shortened.¹⁰

III. Comment Letters

Commenters support the proposal.¹¹ One commenter, while supporting the proposed rule change, believes that FINRA needs to go further to “address and correct the present system that allows for the routine expungement of

for Securities Industry Registration); Form U6 (Uniform Disciplinary Action Reporting Form); Form BD (Uniform Application for Broker-Dealer Registration); and Form BDW (Uniform Request for Broker-Dealer Withdrawal).

⁶ See Notice, *supra* note 3, at 59216.

⁷ See Securities Exchange Act Release No. 55127 (January 18, 2007), 72 FR 3455 (January 25, 2007) (Order Approving File No. SR-NASD-2003-168).

⁸ FINRA states that, for purposes of the proposed rule change, a Form U5 will be considered processed once the Disclosure Reporting Page, which contains the details about a disclosure event, has been reviewed by FINRA staff. FINRA states that most Forms U5 that contain disclosure information are processed within two days of being filed with the CRD system. See Notice, *supra* note 3, at 59216, n.7.

⁹ For example, if disclosure information on Form U5 is processed on Monday, FINRA would release that information via BrokerCheck on Thursday.

¹⁰ For example, if FINRA processes a disclosure event reported on Form U5 on Monday, and on Tuesday processes a Form U4 filed by a broker reporting that event, the Form U5 information would be made publicly available in BrokerCheck on Wednesday, which is the same day that the Form U4 information would be released.

¹¹ See PIABA Letter at 1 and Hammond Letter.

customer claims” from BrokerCheck and to expand the information available to the public through BrokerCheck to include more comprehensive CRD disclosure information that is currently available through some state legacy CRD systems.¹² Another commenter noted that releasing information sooner protects the public and reduces the chance that an investor might deal with a broker who has been terminated.¹³

IV. Discussion and Commission Findings

After careful review of the proposed rule change and the comment letters, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.¹⁴ Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁵ which requires, among other things, that FINRA’s rules 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.

The proposed rule change, by reducing the waiting period for the release of Form U5 information through BrokerCheck, is designed to enhance investor protection by allowing investors to more quickly access disclosure information reported on Form U5 through BrokerCheck and limiting the time period during which an incomplete picture of a broker’s disclosure history may be displayed in BrokerCheck. In addition, by providing for the simultaneous release of Forms U4 and U5 information on BrokerCheck before the three-business day waiting period in the case where the same disclosure event is reported on both forms, the proposed rule should help to reduce investor uncertainty and confusion regarding the same disclosure event; namely, a broker’s termination from his prior firm.

The Commission believes that BrokerCheck is an important tool for investors to use to help them make informed choices about the individuals and firms with which they conduct business.¹⁶ The Commission believes

¹² See PIABA Letter at 2.

¹³ See Hammond Letter.

¹⁴ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78o-3(b)(6).

¹⁶ The Commission encourages investors to utilize all sources of information, including the databases of state regulators, as well as legal search

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 75988 (September 25, 2015), 80 FR 59215 (“Notice”).

⁴ See Letter from Joseph C. Peiffer, President, Public Investors Arbitration Bar Association, dated October 19, 2015 (“PIABA Letter”) and Letter from Denise M. Hammond, Law Student, Barry University, dated October 22, 2014 (“Hammond Letter”).

⁵ FINRA discloses through BrokerCheck information that is reported on the following uniform registration forms: Form U4 (Uniform Application for Securities Industry Registration or Transfer); Form U5 (Uniform Termination Notice

that reducing the waiting period for the release of Form U5 disclosure information through BrokerCheck, and releasing Form U4 and Form U5 information regarding the same disclosure event simultaneously on BrokerCheck before the end of the waiting period, will limit the time period during which an incomplete picture of a broker's disclosure history may be displayed in BrokerCheck and should help to reduce investor confusion regarding the reason for a broker's termination. The Commission notes that brokers on whose behalf a Form U5 is submitted will continue to have an opportunity to comment on the reported disclosure event either through a Form U4 or by submitting a broker comment directly to FINRA for inclusion in BrokerCheck.

The Commission appreciates FINRA's efforts to enhance BrokerCheck and encourages FINRA to continue improving it and to consider the suggestions made regarding the expungement of customer claims from BrokerCheck and expanding the information made available to the public through BrokerCheck.¹⁷

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-FINRA-2015-032), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-28680 Filed 11-10-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31896; File No. 812-14534]

Wildermuth Endowment Strategy Fund and Wildermuth Advisory, LLC; Notice of Application

November 5, 2015.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an

exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c-3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution fees and early withdrawal charges ("EWCs").

APPLICANTS: Wildermuth Endowment Strategy Fund (the "Fund") and Wildermuth Advisory, LLC (the "Adviser").

FILING DATES: The application was filed on August 13, 2015.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 30, 2015, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: Wildermuth Endowment Strategy Fund and Wildermuth Advisory, LLC, c/o David J. Baum, Esq. Alston & Bird, LLC, 950 F Street NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kaitlin C. Bottock, Senior Counsel, at (202) 551-8658, or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Fund is a Delaware statutory trust that is registered under the Act as a non-diversified, closed-end management investment company. The Fund's investment objective is to seek total return through a combination of long-term capital appreciation and income generation.

2. The Adviser is a Delaware limited liability company and is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to the Fund.

3. The applicants seek an order to permit the Fund to issue multiple classes of shares, each having its own fee and expense structure, and to impose asset-based distribution fees and EWCs.

4. Applicants request that the order also apply to any continuously-offered registered closed-end management investment company that has been previously organized or that may be organized in the future for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,¹ acts as investment adviser and which operates as an interval fund pursuant to rule 23c-3 under the Act or provides periodic liquidity with respect to its shares pursuant to rule 13e-4 under the Securities Exchange Act of 1934 ("Exchange Act") (each, a "Future Fund" and together with the Fund, the "Funds").²

5. The Fund is currently making a continuous public offering of its common shares. Applicants state that additional offerings by any Fund relying on the order may be on a private placement or public offering basis. Shares of the Funds will not be listed on any securities exchange, nor quoted on any quotation medium. The Funds do not expect there to be a secondary trading market for their shares.

6. If the requested relief is granted, the Fund intends to redesignate its common shares as "Class A Shares" and to continuously offer "Class C Shares", and may also offer additional classes of shares in the future. Because of the different distribution fees, services and any other class expenses that may be attributable to the Class A Shares and

¹ A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

² Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

¹⁷ See *supra* note 12 and accompanying text.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

Class C Shares, the net income attributable to, and the dividends payable on, each class of shares may differ from each other.

7. Applicants state that, from time to time, the Fund may create additional classes of shares, the terms of which may differ from the Class A and Class C Shares in the following respects: (i) The amount of fees permitted by different distribution plans or different service fee arrangements; (ii) voting rights with respect to a distribution plan of a class; (iii) different class designations; (iv) the impact of any class expenses directly attributable to a particular class of shares allocated on a class basis as described in the application; (v) any differences in dividends and net asset value resulting from differences in fees under a distribution plan or in class expenses; (vi) any EWC or other sales load structure; and (vii) exchange or conversion privileges of the classes as permitted under the Act.

8. Applicants state that the Fund has adopted a fundamental policy to repurchase a specified percentage of its shares (no less than 5%) at net asset value on a quarterly basis. Such repurchase offers will be conducted pursuant to rule 23c-3 under the Act. Each of the other Funds will likewise adopt fundamental investment policies in compliance with rule 23c-3 and make quarterly repurchase offers to its shareholders or provide periodic liquidity with respect to its shares pursuant to rule 13e-4 under the Exchange Act.³ Any repurchase offers made by the Funds will be made to all holders of shares of each such Fund.

9. Applicants represent that any asset-based service and distribution fees for each class of shares will comply with the provisions of NASD Rule 2830(d) ("NASD Sales Charge Rule").⁴ Applicants also represent that each Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N-1A. As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and describe any arrangements that result in breakpoints in or elimination of sales

³ Applicants submit that rule 23c-3 and Regulation M under the Exchange Act permit an interval fund to make repurchase offers to repurchase its shares while engaging in a continuous offering of its shares pursuant to Rule 415 under the Securities Act of 1933.

⁴ Any reference to the NASD Sales Charge Rule includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority ("FINRA").

loads in its prospectus.⁵ In addition, applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.⁶

10. Each of the Funds will comply with any requirements that the Commission or FINRA may adopt regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements, as if those requirements applied to the Fund. In addition, each Fund will contractually require that any distributor of the Fund's shares comply with such requirements in connection with the distribution of such Fund's shares.

11. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of the Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. Applicants state that each Fund will comply with the provisions of rule 18f-3 under the Act as if it were an open-end investment company.

12. Applicants state that each Fund may impose an EWC on shares submitted for repurchase that have been held less than a specified period and may waive the EWC for certain categories of shareholders or transactions to be established from time to time. Applicants state that each of the Funds will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d-1 under the Act as if the Funds were open-end investment companies.

13. Each Fund operating as an interval fund pursuant to rule 23c-3 under the

⁵ See Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

⁶ Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). See also Rules 12d1-1, *et seq.* of the Act.

Act may offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with the Fund's periodic repurchase offers, exchange their shares of the Fund for shares of the same class of (i) registered open-end investment companies or (ii) other registered closed-end investment companies that comply with rule 23c-3 under the Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, "Other Funds"). Shares of a Fund operating pursuant to rule 23c-3 that are exchanged for shares of Other Funds will be included as part of the amount of the repurchase offer amount for such Fund as specified in rule 23c-3 under the Act. Any exchange option will comply with rule 11a-3 under the Act, as if the Fund were an open-end investment company subject to rule 11a-3. In complying with rule 11a-3, each Fund will treat an EWC as if it were a contingent deferred sales load ("CDSL").

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c), as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c)

from sections 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its shares and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f-3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f-3 as if it were an open-end investment company.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company shall purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c-3 under the Act permits a registered closed-end investment company (an "interval fund") to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c-3(b)(1) under the Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c-3 to the extent necessary for the Funds to

impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the EWCs they intend to impose are functionally similar to CDSLs imposed by open-end investment companies under rule 6c-10 under the Act. Rule 6c-10 permits open-end investment companies to impose CDSLs, subject to certain conditions. Applicants note that rule 6c-10 is grounded in policy considerations supporting the employment of CDSLs where there are adequate safeguards for the investor and state that the same policy considerations support imposition of EWCs in the interval fund context. In addition, applicants state that EWCs may be necessary for the distributor to recover distribution costs. Applicants represent that any EWC imposed by the Funds will comply with rule 6c-10 under the Act as if the rule were applicable to closed-end investment companies. The Funds will disclose EWCs in accordance with the requirements of Form N-1A concerning CDSLs.

Asset-Based Distribution Fees

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d-1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d-3 under the Act provides an exemption from section 17(d) and rule 17d-1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b-1 under the Act. Applicants request an order under section 17(d) and rule 17d-1 under the Act to the extent necessary to permit the Fund to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b-1 and 17d-3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution

of its shares through asset-based distribution fees.

For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based distribution fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c-10, 12b-1, 17d-3, 18f-3, 22d-1, and, where applicable, 11a-3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the NASD Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-28696 Filed 11-10-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31893; 812-14531]

Forum Funds and Exceed Advisory LLC; Notice of Application

November 5, 2015.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of

Form N-1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (“Disclosure Requirements”). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

APPLICANTS: Forum Funds (the “Trust”), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Exceed Advisory LLC (the “Adviser”), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (together, the Trust and Adviser are “Applicants”).

FILING DATES: The application was filed on August 11, 2015, and amended on October 8, 2015.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 30, 2015, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

Applicants: Zachary R. Tackett, Esq., Forum Funds, Three Canal Plaza, Suite 600, Portland, ME 04101, and Joseph Halpern, Exceed Advisory LLC, 28 West 44th Street, 16th Floor, New York, NY 10036.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6812, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

may be obtained via the Commission’s Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551–8090.

Summary of the Application

1. The Adviser serves as the investment adviser to certain series of the Trust (the “Series”) pursuant to an investment advisory agreement with the Trust (the “Advisory Agreement”).¹ The Adviser provides the Subadvised Series with continuous and comprehensive investment management services subject to the supervision of, and policies established by, each Subadvised Series’ board of trustees (“Board”). The Advisory Agreement permits the Adviser, subject to the approval of the Board, to delegate to one or more Sub-Advisers the responsibility to provide the day-to-day portfolio investment management for all or a portion of the assets of each Subadvised Series, subject to the supervision and direction of the Adviser.² The Adviser will continue to have overall responsibility for the management and investment of the assets of each Subadvised Series. The Adviser will hire, evaluate, allocate assets to and oversee the Sub-Advisers, including determining whether a Sub-Adviser should be terminated, at all times subject to the authority of the Board.

2. Applicants request an exemption to permit the Adviser, subject to Board approval, to hire Sub-Advisers pursuant to investment sub-advisory agreements

¹ Applicants request relief with respect to the named Applicants, any future Series of the Trust and any other registered open-end management company or series thereof that intends to rely on the requested order in the future and that: (a) Is advised by the Adviser or its successor or by any entity controlling, controlled by, or under common control with the Adviser or its successor (included in the term “Adviser”); (b) uses the multi-manager structure described in the application; and (c) complies with the terms and conditions of the application (each, a “Subadvised Series”). For purposes of the requested order, “successor” is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

² A “Sub-Adviser” for a Series is (1) an indirect or direct “wholly owned subsidiary” (as such term is defined in section 2(a)(43) the Act) of the Adviser for that Series, or (2) a sister company of the Adviser for that Series that is an indirect or direct wholly owned subsidiary of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a “Wholly-Owned Sub-Adviser” and collectively, the “Wholly-Owned Sub-Advisers”), or (3) an investment sub-adviser for that Series that is not an “affiliated person” (as such term is defined in section 2(a)(3) of the Act) of the Series or the Adviser, except to the extent that an affiliation arises solely because the sub-adviser serves as a sub-adviser to one or more Series (each a “Non-Affiliated Sub-Adviser” and collectively, the “Non-Affiliated Sub-Advisers”).

(“Sub-Advisory Agreements”) and materially amend existing Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f–2 under the Act.³ Applicants also seek an exemption from the Disclosure Requirements to permit a Subadvised Series to disclose (as both a dollar amount and a percentage of the Subadvised Series’ net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Advisers; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, “Aggregate Fee Disclosure”).

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Subadvised Series’ shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Subadvised Series’ shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Advisory Agreements will remain subject to shareholder approval, while the role of the Sub-Advisers is substantially equivalent to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Subadvised Series. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser’s ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Subadvised Series.

³ The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Series or the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Series (“Affiliated Sub-Adviser”).

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-28694 Filed 11-10-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76374; File No. SR-NYSE-2015-52]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to the Co-Location Services Offered by the Exchange (the Offering of a Wireless Connection To Allow Users To Receive Market Data Feeds From Third Party Markets) and To Reflect Changes to the Exchange's Price List Related to These Services

November 5, 2015.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 23, 2015, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to change the co-location services offered by the Exchange to include a means for co-located Users to receive market data feeds from third party markets through a wireless connection. In addition, the proposed rule change reflects changes to the Exchange's Price List related to

these services. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change the co-location⁴ services offered by the Exchange to include a means for Users to receive market data feeds from third party markets (the "Third Party Data") through a wireless connection.⁵ In addition, this proposed rule change reflects changes to the Exchange's Price List related to these co-location services.

The Exchange proposes to offer the wireless connection to provide Users with an alternative means of connectivity for Third Party Data. Wireless connections involve beaming signals through the air between antennas that are within sight of one another. Because the signals travel a straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), wireless messages have lower latency than messages travelling through fiber optics.

Under the proposed rule change, the Exchange would utilize a network

vendor to provide a wireless connection to the Third Party Data through wireless connections from the Exchange access centers in Secaucus and Carteret, New Jersey, to its data center in Mahwah, New Jersey, through a series of towers equipped with wireless equipment.⁶ The wireless connectivity would be an optional offering, offering an alternative method for connectivity to the Third Party Data.

A User that chooses this optional service would be able to receive data feeds from NASDAQ and BATS Exchange, Inc. over a wireless connection. To receive Third Party Data, the User would enter into a contract with the relevant third party market, which would charge the User the applicable market data fees for the Third Party Data. The Exchange would charge the User fees for the wireless connection for the Third Party Data.⁷

A User would be charged a \$5,000 non-recurring initial charge for each wireless connection and a monthly recurring charge ("MRC") that would vary depending upon the feed that the User opts to receive. If a User purchased two wireless connections, it would pay two non-recurring initial charges. The Exchange proposes to waive the first month's MRC, to allow Users to test the receipt of the feed(s) for a month before incurring any MRCs.

The Exchange proposes that the wireless connections would include the use of one port for connectivity to the Third Party Data. A User will only require one port to connect to the Third Party Data, irrespective of how many of the five wireless connections it orders. If a User that has more than one wireless connection wishes to use more than one port to connect to the Third Party Data,⁸ the Exchange proposes to make such additional ports available for a monthly fee per port of \$3,000.

The Exchange proposes to revise its Price List to reflect fees related to these connections and ports, as follows:

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. See Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

⁵ For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly

from the Exchange. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR-NYSE-2015-40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC and NYSE Arca, Inc. See Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR-NYSE-2013-59).

⁶ The NASDAQ Stock Market LLC ("NASDAQ") offers a similar wireless service. See Securities Exchange Act Release No. 68735 (January 25, 2013), 78 FR 6842 (January 31, 2013) (SR-NASDAQ-2012-

119) (approving a proposed rule change to establish a new optional wireless connectivity for collocated clients).

⁷ A User would only receive the Third Party Data for which it had entered into a contract. For example, a User that contracted with NASDAQ for the NASDAQ Totalview-ITCH data feed but did not contract to receive any other Third Party Data would receive only the NASDAQ Totalview-ITCH data feed through its wireless connection.

⁸ For example, a User with two wireless connections for Third Party Data may opt to purchase an additional port in order to route the options and equity data it receives to different cabinets.

Description	Amount of charge
Wireless connection of BATS Pitch BZX Gig shaped data	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of DirectEdge EDGX Gig shaped data	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of NASDAQ Totalview-ITCH data	\$5,000 per connection initial charge plus monthly charge per connection of \$8,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of NASDAQ BX Totalview-ITCH data	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of NASDAQ Totalview-ITCH and BX Totalview-ITCH data.	\$5,000 per connection initial charge plus monthly charge per connection of \$12,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Port for wireless connection	\$3,000 monthly charge per port, excluding first port.

There is limited bandwidth available on the wireless connection for data feeds from third parties, and so the Exchange has opted to offer only the Third Party Data, which are data feeds that are in high demand from Users. The wireless network offered by the Exchange, although constrained by bandwidth with respect to the number of feeds it can carry, can be made available to an unlimited number of Users.

The Exchange proposes to offer the wireless connection to provide Users with an alternative means of connectivity for Third Party Data. Currently, Users can receive Third Party Data from wireless networks offered by third party vendors.⁹ Users can also receive Third Party Data through other methods, including, for example, from another User, through a telecommunications provider, or over the internet protocol ("IP") network.¹⁰

The wireless connection to the Third Party Data is expected to be available no later than March 1, 2016. The Exchange will announce the date that the wireless connection to the Third Party Data will be available through a customer notice.

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a

⁹ Currently, at least four third party vendors offer Users wireless network connections using wireless equipment installed on towers and buildings near the data center.

¹⁰ The IP network is a local area network available in the data center. See Securities Exchange Act Release No. 74222 (February 6, 2015), 80 FR 7888 (February 12, 2015) (SR-NYSE-2015-05) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

Sponsored Participant or an agent thereof (e.g., a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;¹¹ and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.¹²

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(5) of the Act,¹⁴ in particular, because it is designed to prevent

¹¹ As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

¹² See SR-NYSE-2013-59, *supra* note 5 at 51766. The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSEMKT-2015-85 and SR-NYSEArca-2015-99.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed services are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the wireless connection for Third Party Data would provide Users with an alternative means of connectivity for Third Party Data. Users that do not opt to utilize the Exchange's proposed wireless connections would still be able to obtain Third Party Data through other methods, including, for example, from wireless networks offered by third party vendors, another User, through a telecommunications provider, or over the IP network. Users that opt to use wireless connections for Third Party Data would not receive Third Party Data that is not available to all Users, as all market participants that contract with the relevant third party market for the Third Party Data may receive it.

The Exchange believes that this removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest because it would provide Users with choices with respect

to the form and optimal latency of the connectivity they use to receive Third Party Data, allowing a User that opts to receive Third Party Data to select the connectivity and number of ports that better suit its needs, helping it tailor its data center operations to the requirements of its business operations.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁵ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Overall, the Exchange believes that the proposed change is reasonable because the Exchange proposes to offer wireless connection for Third Party Data described herein as a convenience to Users, but in doing so would incur certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and monitoring, support and maintenance of such services. The costs associated with the wireless connections are incrementally higher than fiber optics-based solutions due to the expense of the wireless equipment, cost of installation and testing and ongoing maintenance of the network.

The Exchange believes that the proposed pricing for the wireless connection for Third Party Data is reasonable because it allows Users to select the Third Party Data connectivity option and number of ports that better suit their needs. The fees also reflect the benefit received by Users in terms of lower latency over the fiber optics option. The Exchange believes that the proposed waiver of the first month's MRC is reasonable as it would allow Users to test the receipt of the feed(s) for a month before incurring any monthly recurring fees and may act as an incentive to Users to utilize the new service.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an

equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select wireless connections and ports would be charged the same amount for the same services and would have their first month MRC for wireless connections waived.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁶ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users).

The Exchange believes that allowing Users to receive Third Party Data through a wireless connection will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such access will satisfy User demand for additional options for connectivity for Third Party Data. Currently, Users can receive Third Party Data from wireless networks offered by third party vendors. Based on the information available to it, the Exchange believes that its proposed wireless connection would provide data at the same or similar speed and at the same or similar cost as the existing wireless networks. Accordingly, the proposed wireless connection for Third Party Data would provide Users with an additional wireless connectivity option, thereby enhancing competition.

The Exchange notes that the proposed wireless connection would compete not just with other wireless connections, but also with fiber optic networks, which may be more attractive to some Users as they are more reliable and less susceptible to weather conditions. Users that do not opt to utilize wireless

connections would be able to obtain Third Party Data through other methods, including, for example, from another User, through a telecommunications provider, or over the IP network. In this way, the proposed changes would enhance competition by helping Users tailor their connectivity for Third Party Data to the needs of their business operations by allowing them to select the form and optimal latency of the connectivity they use to receive Third Party Data that best suits their needs, helping them tailor their data center operations to the requirements of their business operations.

The proposed wireless connection to the Third Party Data would traverse wireless connections through a series of towers equipped with wireless equipment, including a pole on the grounds of the data center. The proposed wireless network would have exclusive rights to operate wireless equipment on the data center pole. The Exchange will not sell rights to third parties to operate wireless equipment on the pole, due to space limitations, security concerns, and the interference that would arise between equipment placed too closely together. In addition to space issues, there are contractual restrictions on the use of the roof that the Exchange has determined would not be met if it offered space on the roof for third party wireless equipment. Moreover, access to the pole or roof is not required for third parties to establish wireless networks that can compete with the Exchange's proposed service, as witnessed by the existing wireless networks currently serving Users. Based on the information available to it, the Exchange believes that its proposed wireless connection would provide data at the same or similar speed, and at the same or similar cost, as its proposed wireless connection, thereby enhancing competition.¹⁷

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78f(b)(8).

¹⁷ The Exchange notes that the distance of a wireless network provider's wireless equipment from the User is only one factor in determining overall latency. Other factors include the number of repeaters in the route, the number of switches the data has to travel through, and the millimeter wave and switch technology used.

rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2015-52 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-NYSE-2015-52. 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2015-52 and should be submitted on or before December 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-28691 Filed 11-10-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76373; File No. SR-NYSEMKT-2015-90]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide That the Co-Location Services Offered by the Exchange Include 40 Gigabit Internet Protocol Network Connections in the Exchange's Data Center and To Amend the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule To Implement Fees for the New Service

November 5, 2015.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on October 28, 2015, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to change its rules to provide that the co-location services offered by the Exchange include 40 gigabit ("Gb") internet protocol ("IP") network connections in the Exchange's data center. The Exchange proposes to amend the NYSE MKT Equities Price List ("Price List") and the NYSE Amex Options Fee Schedule ("Fee Schedule") to implement fees for the new service.

The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change its rules to provide that the co-location⁴ services offered by the Exchange include 40 Gb IP network connections in the Exchange's data center. The Exchange proposes to amend the Price List and the Fee Schedule to implement fees for the new service.

Currently, the Exchange's co-location services offer Users⁵ access to two local

⁴ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80) (the "Original Co-location Filing"). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

⁵ For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR-NYSEMKT-2015-67). As specified in the Price List and the Fee Schedule, a User that incurs co-location fees for a particular

area networks available in the data center: The IP network and the Liquidity Center Network (“LCN”).⁶ IP network access is currently available in 1 and 10 Gb capacities. The Exchange also offers 1, 10, and 40 Gb LCN network access and LCN 10 Gb LX network access.⁷

The IP network and LCN provide Users with access to the Exchange’s trading and execution systems and to the Exchange’s proprietary market data products. The IP network also provides Users with access to away market data products. There is greater latency in the

transmission of data between Users and the Exchange for the IP Network than for the LCN. The IP network provides Users that do not need the lower latency of the LCN with a less costly data center network option. Having another data center network also provides Users with the option to create redundancy in their infrastructure.

The proposed rule change would allow Users to purchase 40 Gb IP network connections in the data center. The offering of a 40 Gb IP network connection in addition to the existing 1 and 10 Gb IP network connections

would provide a User more choices regarding the bandwidth of its IP network connections, allowing it to select the option that best corresponds to its needs and is most cost-effective for that User.

The 40 Gb IP network connection is expected to be available no later than April 15, 2016. The Exchange will announce the date that the 40 Gb IP network connection will be available through a customer notice.

The Exchange proposes to establish the following fees for 40 Gb IP network connections:

Type of service	Description	Amount of charge
IP Network Access	40 Gb circuit	\$10,000 per connection initial charge plus \$17,000 monthly per connection.

By comparison, the 1 Gb IP network connection costs \$2,500 per connection initial charge plus \$2,500 monthly per connection and the 10 Gb IP network connection costs \$10,000 per connection initial charge plus \$10,000 monthly per connection. The 40 Gb LCN circuit costs \$15,000 per connection initial charge plus \$20,000 monthly per connection.

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User’s customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (e.g., a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;⁸ and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.⁹

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(5) of the Act,¹¹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed 40 Gb IP network connection is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it would make a service available to Users that require the increased IP network bandwidth, but Users that do not require the increased bandwidth could continue to request an existing lower-bandwidth IP network connection.

Users that require lower latency levels may utilize LCN connections.

The Exchange believes that the proposed service would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the offering of a 40 Gb IP network connection in addition to the existing 1 and 10 Gb IP network connections would provide a User more choices regarding the bandwidth of its IP network connections, allowing it to select the option that best corresponds to its needs and is most cost-effective for that User.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹² in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its member organizations, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Overall, the Exchange believes that the proposed fees for the proposed 40 Gb IP network connection are reasonable because the Exchange proposes to offer the service as a convenience to Users, but in doing so will incur certain costs, including costs related to the data center facility,

co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange’s affiliates New York Stock Exchange LLC and NYSE Arca, Inc. See Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

⁶ See Original Co-location Filing, at 59299 and Securities Exchange Act Release No. 74220 (February 6, 2015), 80 FR 7894 (February 12, 2015) (SR–NYSEMKT–2015–08) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

⁷ See Original Co-location Filing, at 59299 and Securities Exchange Act Release No. 70886 (November 15, 2013), 78 FR 69904 (November 21, 2013) (SR–NYSEMKT–2013–92) (notice of filing and immediate effectiveness of proposed rule change to include LCN 10 Gb LX connection).

⁸ As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange’s trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange’s trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the

data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

⁹ See SR–NYSEMKT–2013–67, *supra* note 5 at 50471. The Exchange’s affiliates have also submitted the same proposed rule change to propose the changes described herein. See SR–NYSE–2015–54 and SR–NYSEArca–2015–105.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b)(4).

hardware and equipment and costs related to personnel required for initial installation and ongoing monitoring, support and maintenance of such service.

The Exchange further believes that the proposed change is reasonable because the proposed fees directly relate to the level of services provided by the Exchange and, in turn, received by the User. In this regard, the fees proposed for 40 Gb IP network connections are higher than, for example, the fees for 10 Gb IP network connections because costs for the initial purchase and ongoing maintenance of the 40 IP network connections are generally higher than those of the lower-bandwidth connections. However, these costs are not anticipated to be four times higher than the existing 10 Gb IP network connection. The Exchange therefore notes that while the proposed bandwidth of the 40 Gb IP network connection is four times greater than the existing 10 Gb IP connection, the proposed fees for the 40 Gb IP network connection are significantly less than four times the fees for the 10 Gb IP connection. Specifically, the proposed initial charge of \$10,000 is the same as the initial charge for the existing 10 Gb IP network connection and the proposed monthly recurring charge of \$17,000 is less than double the \$10,000 monthly charge for the existing 10 Gb IP network connection. The Exchange believes that this supports a finding that the proposed pricing is reasonable because the Exchange anticipates realizing efficiencies as customers adopt higher-bandwidth connections, and, in turn, reflecting such efficiencies in the pricing for such connections.

As with fees for existing co-location services, the fees proposed herein would be charged only to those Users that voluntarily select the 40 Gb IP network connection, which would be available to all Users. Accordingly, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the proposed 40 Gb IP network service will

be charged the same amount for the service.

For the reasons above, the proposed change would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹³ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed service being completely voluntary, it will be available to all Users on an equal basis (*i.e.* the same products and services are available to all Users).

The Exchange believes that allowing Users to purchase 40 Gb IP network connections will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such service will be available to Users that require the increased IP network bandwidth, but Users that do not require the increased bandwidth could continue to request an existing lower-bandwidth IP network connection. The offering of a 40 Gb IP network connection in addition to the existing 1 and 10 Gb IP network connections would provide a User more choices regarding the bandwidth of its IP network connections, allowing it to select the option that best corresponds to its needs and is most cost-effective for that User. In addition, the Exchange believes that the proposed change will enhance competition, in that The NASDAQ Stock Market LLC ("NASDAQ") similarly makes a 40 Gb fiber connection available to users of its co-location facilities.¹⁴

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment,

the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

¹³ 15 U.S.C. 78f(b)(8).

¹⁴ See NASDAQ Rule 7034 for a description of NASDAQ's co-location services.

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 No. SR-NYSEMKT-2015-90 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 No. SR-NYSEMKT-2015-90. 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 Web site (<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 Web site 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NYSEMKT-2015-90, and should be submitted on or before December 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-28690 Filed 11-10-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76369; File No. SR-NYSE-2015-54]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide That the Co-Location Services Offered by the Exchange Include 40 Gigabit Internet Protocol Network Connections in the Exchange's Data Center and To Amend the Exchange's Price List To Implement Fees for the New Service

November 5, 2015.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on October 28, 2015, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to provide that the co-location services offered by the Exchange include 40 gigabit ("Gb") internet protocol ("IP") network connections in the Exchange's data center. The Exchange proposes to amend the Exchange's Price List ("Price List") to implement fees for the new service. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change its rules to provide that the co-location⁴ services offered by the Exchange include 40 Gb IP network connections in the Exchange's data center. The Exchange proposes to amend the Price List to implement fees for the new service.

Currently, the Exchange's co-location services offer Users⁵ access to two local area networks available in the data center: the IP network and the Liquidity Center Network ("LCN").⁶ IP network access is currently available in 1 and 10 Gb capacities. The Exchange also offers 1, 10, and 40 Gb LCN network access and LCN 10 Gb LX network access.⁷

⁴ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. See Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56) (the "Original Co-location Filing"). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

⁵ For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR-NYSE-2015-40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC and NYSE Arca, Inc. See Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR-NYSE-2013-59).

⁶ See Original Co-location Filing, at 59311 and Securities Exchange Act Release No. 74222 (February 6, 2015), 80 FR 7888 (February 12, 2015) (SR-NYSE-2015-05) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

⁷ See Original Co-location Filing, at 59311 and Securities Exchange Act Release No. 70888 (November 15, 2013), 78 FR 69907 (November 21,

The IP network and LCN provide Users with access to the Exchange’s trading and execution systems and to the Exchange’s proprietary market data products. The IP network also provides Users with access to away market data products. There is greater latency in the transmission of data between Users and the Exchange for the IP Network than for the LCN. The IP network provides Users that do not need the lower latency of the LCN with a less costly data center network option. Having another data

center network also provides Users with the option to create redundancy in their infrastructure.

The proposed rule change would allow Users to purchase 40 Gb IP network connections in the data center. The offering of a 40 Gb IP network connection in addition to the existing 1 and 10 Gb IP network connections would provide a User more choices regarding the bandwidth of its IP network connections, allowing it to select the option that best corresponds

to its needs and is most cost-effective for that User.

The 40 Gb IP network connection is expected to be available no later than April 15, 2016. The Exchange will announce the date that the 40 Gb IP network connection will be available through a customer notice.

The Exchange proposes to establish the following fees for 40 Gb IP network connections:

Type of service	Description	Amount of charge
IP Network Access	40 Gb circuit	\$10,000 per connection initial charge plus \$17,000 monthly per connection.

By comparison, the 1 Gb IP network connection costs \$2,500 per connection initial charge plus \$2,500 monthly per connection and the 10 Gb IP network connection costs \$10,000 per connection initial charge plus \$10,000 monthly per connection. The 40 Gb LCN circuit costs \$15,000 per connection initial charge plus \$20,000 monthly per connection.

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User’s customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (e.g., a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;⁸ and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.⁹

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections

6(b)(5) of the Act,¹¹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed 40 Gb IP network connection is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it would make a service available to Users that require the increased IP network bandwidth, but Users that do not require the increased bandwidth could continue to request an existing lower-bandwidth IP network connection. Users that require lower latency levels may utilize LCN connections.

The Exchange believes that the proposed service would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the offering of a 40 Gb IP network connection in addition to the existing 1 and 10 Gb IP network connections would provide a User more choices regarding the bandwidth of its

IP network connections, allowing it to select the option that best corresponds to its needs and is most cost-effective for that User.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹² in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Overall, the Exchange believes that the proposed fees for the proposed 40 Gb IP network connection are reasonable because the Exchange proposes to offer the service as a convenience to Users, but in doing so will incur certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and ongoing monitoring, support and maintenance of such service.

The Exchange further believes that the proposed change is reasonable because the proposed fees directly relate to the level of services provided by the Exchange and, in turn, received by the User. In this regard, the fees proposed for 40 Gb IP network connections are higher than, for example, the fees for 10 Gb IP network connections because costs for the initial purchase and ongoing maintenance of the 40 IP network connections are generally higher than those of the lower-bandwidth connections. However, these

2013) (SR–NYSE–2013–73) (notice of filing and immediate effectiveness of proposed rule change to include LCN 10 Gb LX connection).

⁸ As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange’s trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent

to the Exchange enter the Exchange’s trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

⁹ See SR–NYSE–2013–59, *supra* note 5 at 51766. The Exchange’s affiliates have also submitted the same proposed rule change to propose the changes described herein. See SR–NYSEMKT–2015–90 and SR–NYSEArca–2015–105.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b)(4).

costs are not anticipated to be four times higher than the existing 10 Gb IP network connection. The Exchange therefore notes that while the proposed bandwidth of the 40 Gb IP network connection is four times greater than the existing 10 Gb IP connection, the proposed fees for the 40 Gb IP network connection are significantly less than four times the fees for the 10 Gb IP connection. Specifically, the proposed initial charge of \$10,000 is the same as the initial charge for the existing 10 Gb IP network connection and the proposed monthly recurring charge of \$17,000 is less than double the \$10,000 monthly charge for the existing 10 Gb IP network connection. The Exchange believes that this supports a finding that the proposed pricing is reasonable because the Exchange anticipates realizing efficiencies as customers adopt higher-bandwidth connections, and, in turn, reflecting such efficiencies in the pricing for such connections.

As with fees for existing co-location services, the fees proposed herein would be charged only to those Users that voluntarily select the 40 Gb IP network connection, which would be available to all Users. Accordingly, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the proposed 40 Gb IP network service will be charged the same amount for the service.

For the reasons above, the proposed change would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹³ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed service being completely voluntary, it will be available to all Users on an equal basis (*i.e.* the same products and services are available to all Users).

The Exchange believes that allowing Users to purchase 40 Gb IP network connections will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such service will be available to Users that require the increased IP network bandwidth, but Users that do not require the increased bandwidth could continue to request an existing lower-bandwidth IP network connection. The offering of a 40 Gb IP network connection in addition to the existing 1 and 10 Gb IP network connections would provide a User more choices regarding the bandwidth of its IP network connections, allowing it to select the option that best corresponds to its needs and is most cost-effective for that User. In addition, the Exchange believes that the proposed change will enhance competition, in that The NASDAQ Stock Market LLC ("NASDAQ") similarly makes a 40 Gb fiber connection available to users of its co-location facilities.¹⁴

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

¹³ 15 U.S.C. 78f(b)(8).

¹⁴ See NASDAQ Rule 7034 for a description of NASDAQ's co-location services.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-NYSE-2015-54 on the subject line.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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 No. SR-NYSE-2015-54. 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 Web site (<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 Web site 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NYSE-2015-54, and should be submitted on or before December 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-28693 Filed 11-10-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76365; File No. SR-NASDAQ-2015-130]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Chapter XV, Entitled "Options Pricing," at Section 2 Governing Pricing for NASDAQ Members

November 5, 2015.

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 October 29, 2015, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at Chapter XV, Section 2 entitled "NASDAQ Options Market—Fees and Rebates," which governs pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on November 2, 2015.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.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 the following change to the NOM transaction fees set forth at Chapter XV, Section 2 for executing and routing standardized equity and index options under the Penny Pilot³ Options program.

The proposed change is as follows:
Fees for Removing Liquidity in Penny Pilot Options: the Exchange proposes to:

1. Increase the Non-NOM Market Maker⁴ fee from \$0.50 to \$0.55 per

³ The Penny Pilot was established in March 2008 and has since been expanded and extended through June 30, 2016. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR-NASDAQ-2008-026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR-NASDAQ-2009-091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR-NASDAQ-2009-097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR-NASDAQ-2010-013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR-NASDAQ-2010-053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR-NASDAQ-2011-169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR-NASDAQ-2012-075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR-NASDAQ-2012-143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013); 69787 (June 18, 2013), 78 FR 37858 (June 24, 2013) (SR-NASDAQ-2013-082) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2013); 71105 (December 17, 2013), 78 FR 77530 (December 23, 2013) (SR-NASDAQ-2013-154) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2014); 79 FR 31151 (May 23, 2014), 79 FR 31151 (May 30, 2014) (SR-NASDAQ-2014-056) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2014); 73686 (December 2, 2014), 79 FR 71477 (November 25, 2014) (SR-NASDAQ-2014-115) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2015) and 75283 (June 24, 2015), 80 FR 37347 (June 30, 2015) (SR-NASDAQ-2015-063) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted.) See also NOM Rules, Chapter VI, Section 5.

⁴ The term "NOM Market Maker" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁰ 17 CFR 200.30-3(a)(12).

contract for options overlying iShares MSCI Emerging Markets (“EEM”), SPDR Gold Shares (“GLD”), iShares Russell 2000 ETF (“IWM”), PowerShares QQQ (“QQQ”), and SPDR S&P 500 (“SPY”).

2. This rule change is based on a rule change by Miami International Securities Exchange LLC (“MIAX”) and is a competitive response to increase fees in similar manner as MIAX only with respect to Non-NOM Market Maker pricing in certain symbols, as described above.

This rule change is described in greater detail below.

Non-NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options

The Exchange proposes, beginning November 2, 2015, to increase the Non-NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options from \$0.50 to \$0.55 per contract for options overlying EEM, GLD, IWM, QQQ, and SPY. The Exchange notes that the Fees for Removing Liquidity for other Participants in Penny Pilot Options will remain the same.⁵ Also, Non-NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options in all other Penny Pilot Option symbols, except EEM, GLD, IWM, QQQ, and SPY, will remain the same.

The Exchange believes that this incentive will encourage Non-NOM Market Makers to transact a greater number of orders on the Exchange.

The purpose of the proposed rule change is to increase the Non-NOM Market Maker Fee For Removing Liquidity in Penny Pilot Options for options overlying EEM, GLD, IWM, QQQ, and SPY, so that the transaction fees for NOM Market Makers in options overlying EEM, GLD, IWM, QQQ, and SPY remain lower as compared to Non-NOM Market Makers. The Exchange proposes to add a new note “2” to Chapter XV, Section (2)(1) which states, “The Exchange will assess Non-NOM Market Makers a \$0.55 per contract Fee for Removing Liquidity in Penny Pilot Options in the following symbols: EEM, GLD, IWM, QQQ, and SPY.” The Exchange notes that maintaining this fee differential encourages market participants to become members and register as NOM Market Makers versus otherwise sending orders to the Exchange as a an away market maker.

also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

⁵ Customers, Professionals, Firms, NOM Market Makers and Broker-Dealers will continue to be assessed a \$0.50 per contract Fee for Removing Liquidity in Penny Pilot Options.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Non-NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options

The Exchange’s proposal to increase the Non-NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options for options overlying EEM, GLD, IWM, QQQ, and SPY from \$0.50 to \$0.55 per contract is reasonable to provide lower fees to NOM Market Makers as compared to Non-NOM Market Makers to encourage market participants to become members and register as NOM Market Makers. This rule change is also similar to current MIAX pricing.⁸

The Exchange’s proposal to increase the Non-NOM Market Maker Fee for Removing Liquidity in Penny Pilot Options for options overlying EEM, GLD, IWM, QQQ, and SPY from \$0.50 to \$0.55 per contract is equitable and not unfairly discriminatory because the increase applies equally to all Non-NOM Market Makers. In addition, maintaining a higher transaction fee for Non-NOM Market Makers versus NOM Market Makers is equitable and not unfairly discriminatory because NOM Market Makers on the Exchange have enhanced quoting obligations that are not applicable to Non-NOM Market Makers.⁹

In addition, charging non-members higher transaction fees is a common practice amongst exchanges because members are subject to other fees and dues associated with their membership to the Exchange that do not apply to non-members. The proposed differentiation as between Non-NOM Market Makers, NOM Market Makers, and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. Maintaining a

lower transaction fee for NOM Market Makers as compared to Non-NOM Market Makers should incent market participants and market makers on other exchanges to register as NOM Market Makers, which will enhance the quality of quoting and increase the volume of contracts traded in options listed on NOM. To the extent that this purpose is achieved, all the Exchange’s market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the increase in NOM Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

The Exchange believes that establishing different pricing for options overlying EEM, GLD, IWM, QQQ, and SPY options as compared to other Penny Pilot Options is reasonable, equitable, and not unfairly discriminatory because EEM, GLD, IWM, and SPY options are more liquid options as compared to other Penny Pilot Options and the Exchange wants to incentivize market participants to become members and register as NOM Market Makers versus otherwise sending orders to the Exchange as a Non-NOM Market Maker.

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 proposal is designed to maintain lower NOM Market Maker transaction fees for options overlying EEM, GLD, IWM, QQQ, and SPY as compared to Non-NOM Market Makers. To the extent that there is additional competitive burden on Non-NOM Market Makers, the Exchange believes that this is appropriate because charging non-members higher transaction fees is a common practice amongst exchanges and members are subject to other fees and dues associated with their membership to the Exchange that do not apply to non-members. The proposed differentiation as between Non-NOM Market Makers, NOM Market Makers, and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants.

Maintaining a lower transaction fee for NOM Market Makers should incent market participants and market makers on other exchanges to register as NOM Market Makers on the Exchange, which will enhance the quality of quoting and

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ See MIAX Options Fee Schedule.

⁹ See NOM Rules at Chapter VII, Section 6. On a daily basis, a NOM Market Maker must make markets consistent with the applicable quoting requirements on a continuous basis.

increase the volume of contracts traded in options listed on NOM. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposal reflects this competitive environment.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁰

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-NASDAQ-2015-130 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-NASDAQ-2015-130. 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2015-130 and should be submitted on or before December 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-28685 Filed 11-10-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76363; File No. SR-NASDAQ-2015-127]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Chapter XV, Entitled "Options Pricing," at Section 2 Governing Pricing for NASDAQ Members

November 5, 2015.

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 October 23, 2015, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at Chapter XV, Section 2 entitled "NASDAQ Options Market—Fees and Rebates," which governs pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on November 2, 2015.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.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

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the following two changes to the NOM transaction fees set forth at Chapter XV, Section 2 for executing and routing standardized equity and index options under the Penny Pilot³ and Non-Penny Pilot options program.

The proposed changes are as follows: *Fees for Removing Liquidity in Penny Pilot Options*: the Exchange proposes to:

1. Decrease fees from \$0.54 to \$0.50 per contract for all Participant categories other than Customer, which remains at \$0.48.

³ The Penny Pilot was established in March 2008 and has since been expanded and extended through June 30, 2016. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR-NASDAQ-2008-026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR-NASDAQ-2009-091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR-NASDAQ-2009-097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR-NASDAQ-2010-013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR-NASDAQ-2010-053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR-NASDAQ-2011-169) (notice of filing and immediate effectiveness [sic] extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR-NASDAQ-2012-075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR-NASDAQ-2012-143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013); 69787 (June 18, 2013), 78 FR 37858 (June 24, 2013) (SR-NASDAQ-2013-082) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2013); 71105 (December 17, 2013), 78 FR 77530 (December 23, 2013) (SR-NASDAQ-2013-154) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2014); 79 FR 31151 [sic] (May 23, 2014), 79 FR 31151 (May 30, 2014) (SR-NASDAQ-2014-056) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2014); 73686 (December 2, 2014), 79 FR 71477 (November 25, 2014) (SR-NASDAQ-2014-115) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2015) and 75283 (June 24, 2015), 80 FR 37347 (June 30, 2015) (SR-NASDAQ-2015-063) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted.) See also NOM Rules, Chapter VI, Section 5.

2. Removes the Fees for Removing Liquidity in SPY,⁴ which will be equivalent to other Fees for Removing Liquidity in Penny Pilot Options.

3. Renumber current note "3" as note "1" in Chapter XX [sic], Section 2(1).

Rebate to Add Liquidity in Penny Pilot Options: the Exchange proposes to

1. Remove note "d" of Chapter XV, Section 2(1) because this incentive to reduce certain Fees for Removing Liquidity in Penny Pilot Options is no longer relevant as those fees are being reduced herein.

2. Amend note "e" of Chapter XV, Section 2(1) to reduce one of the incentives being offered to Participants that qualify for Tier 8 of the Customer and Professional Penny Pilot Options Rebates to Add Liquidity and amend qualifications for the rebate to "in a month."

3. Renumber current note "e" as note "c" in Chapter XV, Section 2(1).

Each specific change is described in greater detail below.

Change 1—Fees for Removing Liquidity in Penny Pilot Options

The Exchange proposes, beginning November 2, 2015, to decrease from \$0.54 to \$0.50 per contract the Fees for Removing Liquidity in Penny Pilot Options for all Participant categories other than Customer,⁵ which will remain unchanged at \$0.48. This will represent a decrease of \$0.04 per contract of liquidity removed in the Professional,⁶ Firm,⁷ NOM Market Maker,⁸ Non-NOM Market Maker,⁹ and Broker Dealer¹⁰ categories. The

⁴ SPDR® S&P 500® ETF Trust.

⁵ The term "Customer" applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of [sic] broker or dealer or for the account of a "Professional" (as that term is defined in Chapter I, Section 1(a)(48)).

⁶ The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

⁷ The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

⁸ The term "NOM Market Maker" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

⁹ The term "Non-NOM Market Maker" or ("O") is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

¹⁰ The term "Broker-Dealer" or ("B") applies to any transaction which is not subject to any of the

Exchange believes that these fee reductions will benefit market participants and encourage them to send greater order flow to NOM.

The Exchange also proposes to remove the current fees listed in Chapter XV, Section 2(1) for executions in SPY, as these fees will now be the same fees assessed for all other Penny Pilot Options and are simply redundant with the proposed changes herein. Specifically, the fees assessed for executions in SPY will remain \$0.48 per contract for Customer and \$0.50 per contract for all other Participants, the same fees proposed herein for all other Penny Pilot Options.

The Exchange also proposes to renumber current note "3" as note "1" in Chapter XX [sic], Section 2(1) as notes "1" and "2" were previously eliminated.

Change 2—Rebate To Add Liquidity in Penny Pilot Options

The Exchange is proposing to remove note "d" of Chapter XV, Section 2(1) because this incentive to reduce certain Fees for Removing Liquidity in Penny Pilot Options is no longer relevant as those fees are being reduced. Note "d" currently states:

Participants that qualify for Customer or Professional Rebate to Add Liquidity Tier 8 in a given month will be assessed a Professional, Firm, Non-NOM Market Maker, NOM Market Maker or Broker-Dealer Fee for Removing Liquidity in Penny Pilot Options of \$0.50 per contract

The Exchange's proposal in Change 1 would reduce the Fees for Removing Liquidity in Penny Pilot Options for Professionals, Firms, NOM Market Makers, Non-NOM Market Makers, and Broker Dealers to \$0.50 per contract. This incentive would no longer be relevant and the Exchange is therefore proposing to remove note "d."

The Exchange also proposes to amend note "e" of Chapter XV, Section 2(1) to reduce one of the incentives being offered to Participants that qualify for Tier 8 of the Customer and Professional Penny Pilot Options Rebates to Add Liquidity.¹¹ Note "e" currently states:

other transaction fees applicable within a particular category.

¹¹ Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month or Participant adds (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 30,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014, and (3) the Participant qualifies for rebates under the Qualified Market Maker ("QMM") Program set forth in Rule 7014.

^eParticipants that [sic] add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional \$0.02 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (2) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.40% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional \$0.05 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (3) (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.85% of total industry customer equity and ETF option ADV contracts per day from October 22, 2015 through October 30, 2015 and (b) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume from October 22, 2015 through October 30, 2015 will receive an additional \$0.05 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options from October 22, 2015 through October 30, 2015. Consolidated Volume shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.

Specifically, the Exchange is amending the third incentive in note "e" which currently states:

(a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.85% of total industry customer equity and ETF option ADV contracts per day from October 22, 2015 through October 30, 2015 and (b) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume from October 22, 2015 through October 30, 2015 will receive an additional \$0.05 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options from October 22, 2015 through October 30, 2015. Consolidated Volume shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting

facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.

The Exchange proposes to reduce this incentive from \$0.05 to \$0.03 per contract and amend the time period of October 22, 2015 through October 30, 2015 to "in a month." The Exchange filed a mid-month amendment for October 2015 which necessitated this rule text. This text is not necessary going forward and will revert to the standard "in a month."¹² The Exchange believes that despite the decrease, this incentive will continue to encourage market participants to send additional order flow to achieve this incentive.

The Exchange also proposes to renumber current note "e" as note "c" in Chapter XV, Section 2(1) as note "c" was previously eliminated.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹³ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,¹⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Change 1—Fees for Removing Liquidity in Penny Pilot Options

Decreasing the Fees for Removing Liquidity in Penny Pilot Options from \$0.54 to \$0.50 per contract for all Participant categories other than Customer is reasonable because the lower fees should encourage these participants to send additional order flow to the Exchange and the additional order flow should benefit all market participants.

Decreasing the Fees for Removing Liquidity in Penny Pilot Options from \$0.54 to \$0.50 per contract for all Participant categories other than Customer is equitable and not unfairly discriminatory because the Exchange would uniformly assess all non-Customers a Penny Pilot Options Fee for

Removing Liquidity of \$0.50 per contract. Customers would be assessed the lowest Penny Pilot Options Fee for Removing Liquidity of \$0.48 per contract. Customer order flow enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The elimination of the SPY Fees for Removing Liquidity in Penny Pilot Options is reasonable because these fees will be the same as the Fees for Removing Liquidity in Penny Pilot Options for all other Penny Pilot Options. The pricing would be redundant.

The elimination of the SPY Fees for Removing Liquidity in Penny Pilot Options is equitable and not unfairly discriminatory because the Exchange would uniformly assess all non-Customers a SPY Penny Pilot Options Fee for Removing Liquidity of \$0.50 per contract, as is the case today and Customers would continue to be assessed the lowest Penny Pilot Options Fee for Removing Liquidity of \$0.48 per contract. Customer order flow enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers.

The Exchange's proposal to renumber current note "3" as note "1" in Chapter XX [sic], Section 2(1) is reasonable, equitable and not unfairly discriminatory because it will add order to the pricing schedule.

Change 2—Rebate To Add Liquidity in Penny Pilot Options

The Exchange's proposal to remove note "d" of Chapter XV, Section 2(1) is reasonable because this incentive to reduce certain Fees for Removing Liquidity in Penny Pilot Options is no longer relevant as those fees are being reduced in this proposal.

The Exchange's proposal to remove note "d" of Chapter XV, Section 2(1) is equitable and not unfairly discriminatory because this incentive to reduce Fees for Removing Liquidity in Penny Pilot Options will not be offered to any Participant.

The Exchange's proposal to amend note "e" of Chapter XV, Section 2(1) to reduce one of the incentives being offered to Participants that qualify for Tier 8 of the Customer and Professional Penny Pilot Options Rebates to Add

¹² This incentive will apply monthly going forward.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

Liquidity from an additional \$0.05 per contract incentive to \$0.03 per contract is reasonable because, despite the reduction in the incentive being offered, the opportunity to earn a higher rebate of \$0.51¹⁵ per contract, provided the qualifications are met, will incentivize Participants to transact an even greater number of qualifying Customer and/or Professional volume, which liquidity will benefit other market participants by providing them the opportunity to interact with that liquidity. The Exchange's proposal to permit Participants to obtain a higher rebate of \$0.51 per contract, provided they qualify for the Tier 8 rebate and the new criteria of note "e"¹⁶ by adding volume in a month, which includes the addition of options and equity volume, is reasonable because the Exchange is encouraging market participants to send order flow to both the options and equity markets to receive the rebate. Incentivizing Participants to add options liquidity through the payment of an additional rebate is not novel and exists today.¹⁷ Today, the Customer and Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 includes, as part of the qualifying criteria, a certification for the Investor Support Program¹⁸ as

¹⁵ Tier 8 pays a rebate of \$0.48 per contract and the additional rebate proposed for note "e" (new note "c") would be a \$0.03 per contract rebate for a total of \$0.51 per contract.

¹⁶ The note "e" incentive being amended requires Participants to (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.85% of total industry customer equity and ETF option ADV contracts per day in a month and (b) add liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month in order to receive an additional \$0.03 per contract Penny Pilot Options Customer Rebate to Add Liquidity. This is the incentive as proposed in this rule change.

¹⁷ Note "e" provides two other opportunities, aside from the incentive which is being amended, to earn a higher rebate. Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month receive an additional \$0.02 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or Participants may add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.40% or more of total industry customer equity and ETF option ADV contracts per day in a month to receive an additional \$0.05 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month.

¹⁸ For a detailed description of the Investor Support Program or ISP, see Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ-2010-141) (notice of filing and immediate effectiveness) (the "ISP Filing"). See also Securities Exchange Act

set forth in Rule 7014 and qualification in the QMM Program.¹⁹ These two programs are equity programs which require participation in the form of adding liquidity. The concept of participating in the equities market as a means to qualify for an options rebate exists today. The Exchange's proposal would require Participants to add liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume during the month. Consolidated Volume shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.

The Exchange's proposal to amend note "e" of Chapter XV, Section 2(1) to reduce one of the incentives being offered to Participants that qualify for Tier 8 of the Customer and Professional Penny Pilot Options Rebates to Add Liquidity from an additional \$0.05 per contract incentive to \$0.03 per contract is equitable and not unfairly discriminatory because all Participants may qualify for Tier 8 and the additional note "e" incentive. Qualifying Participants will be uniformly paid the rebate provided the requirements are met in a month. The Exchange's proposal to permit Participants to receive an additional \$0.03 per contract rebate in addition to the Tier 8 rebate of \$0.48 per contract,

Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ-2010-153) (notice of filing and immediate effectiveness); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ-2010-154) (notice of filing and immediate effectiveness).

¹⁹ A QMM is a NASDAQ member that makes a significant contribution to market quality by providing liquidity at the national best bid and offer ("NBBO") in a large number of stocks for a significant portion of the day. In addition, the NASDAQ equity member must avoid imposing the burdens on NASDAQ and its market participants that may be associated with excessive rates of entry of orders away from the inside and/or order cancellation. The designation "QMM" reflects the QMM's commitment to provide meaningful and consistent support to market quality and price discovery by extensive quoting at the NBBO in a large number of securities. In return for its contributions, certain financial benefits are provided to a QMM with respect to a particular MPID (a "QMM MPID"), as described under Rule 7014(e).

provided they qualify for Tier 8 and add options and equity volume as specified in the new note "e" criteria,²⁰ is equitable and not unfairly discriminatory because market participants today may qualify for a comparable or a higher rebate through alternative means that does not require participation in NOM.

The Exchange's proposal to amend the time period of October 22, 2015 through October 30, 2015 to "in a month" is reasonable because unlike last month when the [sic] Exchange filed a mid-month amendment for October 2015, the amended language is intended to capture the entire month going forward.

The Exchange's proposal to amend the time period of October 22, 2015 through October 30, 2015 to "in a month" is equitable and not unfairly discriminatory because the note "e" qualifications would be uniformly calculated for a month for all Participants.

The Exchange's proposal to renumber current note "e" as note "c" in Chapter XX [sic], Section 2(1) is reasonable, equitable and not unfairly discriminatory because it will add order to the pricing schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inter-market burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because the Exchange is simply responding to competition by adjusting rebates and fees in order to remain competitive in the current environment.

Decreasing the Fees for Removing Liquidity in Penny Pilot Options from \$0.54 to \$0.50 per contract for all Participant categories other than Customer does not create an intra-market undue burden on competition because all Participants would be

²⁰ See note 16.

assessed the same fee, except Customers. Customer order flow is unique in that it enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers.

The elimination of the SPY Fees for Removing Liquidity in Penny Pilot Options does not create an intra-market undue burden on competition because all Penny Pilot Options will be assessed the same [sic] as the Fees for Removing Liquidity.

The Exchange's proposal to remove note "d" of Chapter XV, Section 2(1) does not create an intra-market undue burden on competition because this incentive to reduce certain Fees for Removing Liquidity in Penny Pilot Options is no longer relevant as those fees are being reduced in this proposal.

The Exchange's proposal to amend note "e" of Chapter XV, Section 2(1) to reduce one of the incentives being offered to Participants that qualify for Tier 8 of the Customer and Professional Penny Pilot Options Rebates to Add Liquidity from an additional \$0.05 per contract incentive to \$0.03 per contract does not create an intra-market undue burden on competition because all Participants may qualify for Tier 8 and the additional incentive.

The Exchange's proposal to amend the time period of October 22, 2015 through October 30, 2015 to "in a month" does not create an intra-market undue burden on competition because the amended language is intended to capture the entire month going forward and was previously intended to reflect the effectiveness of a prior rule change.

The remaining renumbering changes do not create an intra-market undue burden on competition because the amendments are non-substantive in nature.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²¹

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-NASDAQ-2015-127 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-NASDAQ-2015-127. 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 Web site (<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 Web site 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-

NASDAQ-2015-127, and should be submitted on or before December 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-28683 Filed 11-10-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76370; File No. SR-Phlx-2015-90]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Business Continuity and Disaster Recovery Plans Testing Requirements

November 5, 2015.

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 November 2, 2015, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 adopt business continuity and disaster recovery plans ("BC/DR Plans") testing requirements for certain Exchange Member Organizations³ and PSX Participants⁴ ("Participants") in

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term "Member Organization" is defined as "a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of Rules 900.1 or 900.2 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws. References herein to officer or partner, when used in the context of a member organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a member organization." See Exchange Rule 1(o).

⁴ The term "PSX Participant" or "Participant" is defined as "an entity that fulfills the obligations

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

connection with Regulation Systems Compliance and Integrity (“Regulation SCI”).⁵

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxphlx.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 is proposing to adopt new Rule 926 to implement the BC/DR Plans requirements of Rule 1004 of Regulation SCI. As adopted by the Commission, Regulation SCI applies to certain self-regulatory organizations (including the Exchange), alternative trading systems (“ATSS”), plan processors, and exempt clearing agencies (collectively, “SCI entities”), and will require these SCI entities to comply with requirements with respect to the automated systems central to the performance of their regulated activities. Among the requirements of Regulation SCI is Rule 1001(a)(2)(v), which requires the Exchange and other SCI entities to

contained in Rule 3211 regarding participation in the System, and includes: (1) ‘Equities ECNs,’ which are member organizations that meet all of the requirements of Rule 3223, and that participate in the System with respect to one or more System Securities; (2) ‘PSX Market Makers’ or ‘Market Makers’, member organizations that are registered as PSX Market Makers for purposes of participation in the System on a fully automated basis with respect to one or more System securities; and (3) ‘Order Entry Firms,’ which are member organizations that are registered for the purposes of entering orders in System Securities into the System. This term shall also include any Electronic Communications Network or Alternative Trading System (as such terms are defined in Regulation NMS) that fails to meet all the requirements of Rule 3223.” See PSX Rule 3301(c).

⁵ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (“SCI Adopting Release”).

maintain “[b]usiness continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption.”⁶ The Exchange has put extensive time and resources toward planning for system failures and already maintains robust BC/DR Plans consistent with the Rule. As set forth below, in connection with Regulation SCI, the Exchange is proposing to require certain Member Organizations and Participants to participate in testing of the operation of the Exchange’s BC/DR Plans.

With respect to an SCI entity’s BC/DR Plans, including its backup systems, paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to: “[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.”⁷ Paragraph (b) of Rule 1004 of Regulation SCI further requires each SCI entity to “[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months.”⁸ In order to comply with Rule 1004 of Regulation SCI, the Exchange proposes to adopt new Rule 926, which incorporates the requirements of Rule 1004 of Regulation SCI as part of the Exchange’s rules, and sets forth the notice, selection criteria and obligations of Member Organizations and Participants with respect to BC/DR Plans testing.

The Exchange proposes to adopt Rule 926(a), which will set forth the Exchange’s obligations with respect to the selection of Members Organizations and Participants for testing. Specifically, the rule will require the Exchange to “[e]stablish standards for the designation of those Members Organizations and Participants that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair

and orderly markets in the event of the activation of such plans.” The proposed new rule further provides that “[s]uch standards may include volume-based and/or market share-based criteria, and may be adjusted from time to time by the Exchange.” Lastly, the proposed new rule will require the Exchange to provide public notice of the standards that it adopts.

The Exchange is proposing to adopt Rule 926(b), which will set forth the obligations of the Exchange and its Members Organizations and Participants with respect to testing. Specifically, the rule will require the Exchange to “designate Members Organizations and PSX Participants pursuant to the standards established in paragraph (a) of this rule and require participation by such designated Members Organizations and PSX Participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the Exchange, provided that such frequency shall not be less than once every 12 months.” Moreover, the rule will require the Exchange to provide at least six months prior notice to Members Organizations and Participants that are designated for mandatory testing. Lastly, the rule will provide notice that participation in testing is a condition of membership for Members Organizations and Participants that are designated for testing.

The Exchange encourages all Member Organizations and Participants to connect to the Exchange’s backup systems and to participate in testing of such systems;⁹ however, certain Member Organizations and Participants will be obligated to participate in BC/DR Plans testing. In adopting new Rule 926, the Exchange will require mandatory participation in BC/DR Plans testing by those Member Organizations and Participants that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans on the Exchange and PSX, respectively. The Exchange believes that using overall participation on its

⁹ In this regard, the Exchange will allow any Member Organization or Participant to participate in the testing of the Exchange’s BC/DR Plans, which is consistent with the Plan. See SCI Adopting Release, *supra* note 5 at 72350. The Exchange will provide instructions on how a Member Organization and Participant must inform the Exchange of its interest in participating in an upcoming BC/DR Plans test via the announcement of the test date. A Member Organization or Participant must provide the Exchange notice of its interest to participate at least a week prior to the test date and must have the appropriate connection for testing in place.

⁶ 17 CFR 242.1001(a)(2)(v).

⁷ 17 CFR 242.1004(a).

⁸ 17 CFR 242.1004(b).

markets (by volume and/or market share) as a measure to select Member Organizations and Participants for mandatory participation in BC/DR Plans testing is a reasonable means by which it can determine which Member Organizations and Participants are necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.¹⁰ For each BC/DR Plans test cycle, the Exchange will select the top ten Member Organizations on the Exchange and the top five Participants on PSX based on the Exchange's measure of overall participation on each of those markets. All notices concerning BC/DR Plans testing will be posted on the Exchange's Web site.

The Exchange is proposing to initially select Member Organizations and Participants with the highest levels of trading volume on the Exchange and PSX over four calendar months ("Measurement Period") as mandatory testing Member Organizations and Participants, respectively.¹¹ Specifically, the Measurement Period will be the four calendar months of trading immediately prior to the Exchange's announcement of the next BC/DR Plans test date. The Measurement Period will always begin at a point after the Exchange announces the criteria to be used in the next BC/DR Plans test. By way of example, if on October 6, 2017 the Exchange announced the BC/DR Plans test selection criteria and on March 2, 2018 the Exchange announced a BC/DR Plans test date of September 8, 2018, the Measurement Period used to select Member Organizations and Participants subject to mandatory testing would be November 2017 through February 2018. Members Organizations and Participants not obligated to participate that wish to participate in this test must inform the Exchange no later than September 1, 2018.¹²

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,¹³ in general, and further the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to prevent fraudulent and

¹⁰ The Exchange will provide notice of the specific selection criteria and measurement period in a notice to Member Organizations and Participants. The initial selection criteria and measurement period will be announced no later than November 3, 2015.

¹¹ The Exchange may change the total number of Member Organizations and Participants selected from time to time.

¹² See note 9.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal will ensure that the Member Organizations and Participants necessary to ensure the maintenance of fair and orderly markets are properly designated consistent with Rule 1004 of Regulation SCI. Specifically, the proposal will adopt clear and objective criteria with respect to the designation of Member Organizations and Participants that are required to participate in the testing of the Exchange's BC/DR Plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release, "SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest."¹⁵ The Exchange believes that this proposal is consistent with such authority and legal responsibility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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, as amended. To the contrary, the proposal is not a competitive proposal but rather is necessary for the Exchange's compliance with Regulation SCI.

¹⁵ See SCI Adopting Release, *supra* note 5 at 72350.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6)(iii) thereunder.¹⁷ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁸ A proposed rule change filed under Rule 19b-4(f)(6)(iii)¹⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to incorporate changes required under Regulation SCI, such as establishing standards for designating BC/DR participants, prior to the November 3, 2015 compliance date. Accordingly, the Commission designates the proposed rule change to be operative upon filing.²¹

At any time within 60 days of the filing of the proposed rule change, the

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 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 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.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-Phlx-2015-90 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-Phlx-2015-90. 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only

information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2015-90 and should be submitted on or before December 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-28698 Filed 11-10-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76372; File No. SR-NYSEARCA-2015-105]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide That the Co-Location Services Offered by the Exchange Include 40 Gigabit Internet Protocol Network Connections in the Exchange's Data Center and To Amend the Exchange's Price List To Implement Fees for the New Services

November 5, 2015.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 28, 2015, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to change its rules to provide that the co-location services offered by the Exchange include 40 gigabit ("Gb") Internet protocol ("IP") network connections in the Exchange's data center. The Exchange proposes to amend the NYSE Arca Options Fee Schedule (the "Options Fee Schedule") and, through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

(the "Equities Fee Schedule" and, together with the Options Fee Schedule, the "Fee Schedules") to implement fees for the new service. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change its rules to provide that the co-location⁴ services offered by the Exchange include 40 Gb IP network connections in the Exchange's data center. The Exchange proposes to amend the Fee Schedules to implement fees for the new service effective.

Currently, the Exchange's co-location services offer Users⁵ access to two local area networks available in the data center: The IP network and the Liquidity Center Network ("LCN").⁶ IP

⁴ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. See Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR-NYSEARCA-2010-100) (the "Original Co-location Filing"). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

⁵ For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEARCA-2015-82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC and NYSE MKT LLC. See Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR-NYSEARCA-2013-80).

⁶ See Original Co-location Filing, at 70049 and Securities Exchange Act Release No. 74219

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

network access is currently available in 1 and 10 Gb capacities. The Exchange also offers 1, 10, and 40 Gb LCN network access and LCN 10 Gb LX network access.⁷

The IP network and LCN provide Users with access to the Exchange's trading and execution systems and to the Exchange's proprietary market data products. The IP network also provides Users with access to away market data products. There is greater latency in the transmission of data between Users and the Exchange for the IP Network than

for the LCN. The IP network provides Users that do not need the lower latency of the LCN with a less costly data center network option. Having another data center network also provides Users with the option to create redundancy in their infrastructure.

The proposed rule change would allow Users to purchase 40 Gb IP network connections in the data center. The offering of a 40 Gb IP network connection in addition to the existing 1 and 10 Gb IP network connections would provide a User more choices

regarding the bandwidth of its IP network connections, allowing it to select the option that best corresponds to its needs and is most cost-effective for that User.

The 40 Gb IP network connection is expected to be available no later than April 15, 2016. The Exchange will announce the date that the 40 Gb IP network connection will be available through a customer notice.

The Exchange proposes to establish the following fees for 40 Gb IP network connections:

Type of service	Description	Amount of charge
IP Network Access	40 Gb circuit	\$10,000 per connection initial charge plus \$17,000 monthly per connection.

By comparison, the 1 Gb IP network connection costs \$2,500 per connection initial charge plus \$2,500 monthly per connection and the 10 Gb IP network connection costs \$10,000 per connection initial charge plus \$10,000 monthly per connection. The 40 Gb LCN circuit costs \$15,000 per connection initial charge plus \$20,000 monthly per connection.

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.*, a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;⁸ and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.⁹

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(5) of the Act,¹¹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed 40 Gb IP network connection is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it would make a service available to Users that require the increased IP network bandwidth, but Users that do not require the increased bandwidth could continue to request an existing lower-bandwidth IP network connection. Users that require lower latency levels may utilize LCN connections.

The Exchange believes that the proposed service would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the offering of a 40 Gb IP network connection in addition to the existing 1 and 10 Gb IP network connections would provide a User more choices regarding the bandwidth of its IP network connections, allowing it to select the option that best corresponds to its needs and is most cost-effective for that User.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹² in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its member organizations, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Overall, the Exchange believes that the proposed fees for the proposed 40 Gb IP network connection are reasonable because the Exchange proposes to offer the service as a convenience to Users, but in doing so will incur certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and ongoing monitoring,

(February 6, 2015), 80 FR 7899 (February 12, 2015) (SR-NYSEArca-2015-03) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

⁷ See Original Co-location Filing, at 70050 and Securities Exchange Act Release No. 70887 (November 15, 2013), 78 FR 69897 (November 21, 2013) (SR-NYSEArca-2013-123) (notice of filing and immediate effectiveness of proposed rule change to include LCN 10 Gb LX connection).

⁸ As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that

receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

⁹ See SR-NYSEArca-2013-80, *supra* note 5 at 50459. The Exchange's affiliates have also submitted the same proposed rule change to propose the changes described herein. See SR-NYSE-2015-54 and SR-NYSEMKT-2015-90.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b)(4).

support and maintenance of such service.

The Exchange further believes that the proposed change is reasonable because the proposed fees directly relate to the level of services provided by the Exchange and, in turn, received by the User. In this regard, the fees proposed for 40 Gb IP network connections are higher than, for example, the fees for 10 Gb IP network connections because costs for the initial purchase and ongoing maintenance of the 40 IP network connections are generally higher than those of the lower-bandwidth connections. However, these costs are not anticipated to be four times higher than the existing 10 Gb IP network connection. The Exchange therefore notes that while the proposed bandwidth of the 40 Gb IP network connection is four times greater than the existing 10 Gb IP connection, the proposed fees for the 40 Gb IP network connection are significantly less than four times the fees for the 10 Gb IP connection. Specifically, the proposed initial charge of \$10,000 is the same as the initial charge for the existing 10 Gb IP network connection and the proposed monthly recurring charge of \$17,000 is less than double the \$10,000 monthly charge for the existing 10 Gb IP network connection. The Exchange believes that this supports a finding that the proposed pricing is reasonable because the Exchange anticipates realizing efficiencies as customers adopt higher-bandwidth connections, and, in turn, reflecting such efficiencies in the pricing for such connections.

As with fees for existing co-location services, the fees proposed herein would be charged only to those Users that voluntarily select the 40 Gb IP network connection, which would be available to all Users. Accordingly, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the proposed 40 Gb IP network service will be charged the same amount for the service.

For the reasons above, the proposed change would not unfairly discriminate

between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹³ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed service being completely voluntary, it will be available to all Users on an equal basis (*i.e.* the same products and services are available to all Users).

The Exchange believes that allowing Users to purchase 40 Gb IP network connections will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such service will be available to Users that require the increased IP network bandwidth, but Users that do not require the increased bandwidth could continue to request an existing lower-bandwidth IP network connection. The offering of a 40 Gb IP network connection in addition to the existing 1 and 10 Gb IP network connections would provide a User more choices regarding the bandwidth of its IP network connections, allowing it to select the option that best corresponds to its needs and is most cost-effective for that User. In addition, the Exchange believes that the proposed change will enhance competition, in that The NASDAQ Stock Market LLC ("NASDAQ") similarly makes a 40 Gb fiber connection available to users of its co-location facilities.¹⁴

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For

the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

¹³ 15 U.S.C. 78f(b)(8).

¹⁴ See NASDAQ Rule 7034 for a description of NASDAQ's co-location services.

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 No. SR-NYSEARCA-2015-105 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 No. SR-NYSEARCA-2015-105. 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 Web site (<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 Web site 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NYSEARCA-2015-105, and should be submitted on or before December 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-28689 Filed 11-10-15; 8:45 am]

BILLING CODE 8011-01-P

²⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76360; File No. SR-FINRA-2015-046]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Mandatory Participation in Business Continuity and Disaster Recovery Testing Under Regulation SCI

November 5, 2015.

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 October 30, 2015, 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 and II 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 proposing to adopt FINRA Rule 4380 related to mandatory participation in business continuity and disaster recovery ("BC/DR") testing under Regulation Systems Compliance and Integrity ("Regulation SCI").

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Regulation SCI was adopted by the Commission on November 19, 2014, with the objective of strengthening the technology infrastructure of the U.S. securities markets.⁴ The regulation applies to "SCI entities," which includes FINRA, the national securities exchanges and equity alternative trading systems ("ATs") that meet specified volume thresholds.⁵ One topic of several Regulation SCI rule requirements is BC/DR testing.

Rule 1004 of SEC Regulation SCI requires FINRA, as an SCI entity, to do the following with respect to its BC/DR plan: (1) Establish standards to designate the members that FINRA reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of its BC/DR plan; (2) designate members pursuant to its established standards and require them to participate in scheduled functional and performance testing of the operation of FINRA's BC/DR plan, in the manner and frequency specified by FINRA, provided the frequency is no less than once every 12 months; and (3) coordinate the testing of FINRA's BC/DR plan on an industry- or sector-wide basis with other SCI entities.

Consistent with Regulation SCI, FINRA proposes to adopt Rule 4380 to establish authority to designate members for mandatory participation in its BC/DR testing. As noted in proposed Rule 4380(a), FINRA will designate members according to established criteria that are designed to ensure participation by those members that FINRA reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of its BC/DR plan. As further noted in proposed Rule 4380(a), FINRA's criteria will consider volume of activity on a FINRA market system over a specified period of time.⁶ FINRA will communicate to members its criteria for designation under this Rule, and any

⁴ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252, 72254 (December 5, 2014) ("SCI Adopting Release").

⁵ Rule 1000 of SEC Regulation SCI.

⁶ Volume-based criteria may contemplate quoting, trading, or reportable order events, depending on the type of activity conducted on a FINRA system.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

changes to such criteria, on a prospective basis⁷ by *Regulatory Notice*.

Proposed Rule 4380(b) would reiterate several important points from Regulation SCI with respect to BC/DR plan testing. Specifically, the rule would note that Regulation SCI requires BC/DR testing to include functional and performance testing, rather than simple connectivity testing, and that such testing must occur at least once per 12 months.⁸ Proposed Rule 4380(b) would further state that FINRA will notify members that are designated to participate in the BC/DR test at least 90 days prior to the scheduled testing date.⁹

Finally, proposed Rule 4380(c) would state the obligations of member firms that are designated for mandatory participation in BC/DR testing. As noted in the rule, designated members would be required to fulfill, within the time frames established by FINRA, certain testing requirements that FINRA determines are necessary and appropriate. These requirements could include, for example, bringing up their systems on the designated testing day and processing test scripts to simulate trading activity. Designated members may also be required to satisfy related reporting requirements, for example, reporting the member's testing results, so that FINRA may evaluate the efficacy of the test and, correspondingly, its BC/DR plan.¹⁰

FINRA recognizes that there may be additional market participants that wish to participate on a voluntary basis in FINRA's annual BC/DR test, beyond those that are designated under Rule 4380. For example, certain system participants may wish to test their backup capabilities even if they do not exceed the system's threshold cutoff. Additionally, third party service

providers, like service bureaus that transmit information to FINRA systems on behalf of FINRA members, may also wish to ensure their ability to function in FINRA's backup environment, even though the service providers are not themselves FINRA members subject to Rule 4380. FINRA will encourage any such market participant to consider voluntary participation in FINRA's BC/DR test, consistent with Commission guidance.¹¹

FINRA has filed the proposed rule change for immediate effectiveness. FINRA will announce its criteria for designated members for mandatory test participation in a *Regulatory Notice* by November 3, 2015, the general compliance date for Regulation SCI. FINRA anticipates that the first BC/DR test that will include designated members' mandatory participation will occur in October, 2016.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹² which requires that FINRA rules must be designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

FINRA believes that the proposal, which would authorize FINRA to compel participation by certain designated members in FINRA's BC/DR testing, is consistent with these provisions of the Act for the reasons articulated by the Commission when it adopted Regulation SCI. As the Commission stated, "unless there is effective participation by certain of its members or participants in the testing of [BC/DR] plans, the objective of ensuring resilient and available markets in general, and the maintenance of fair and orderly markets in particular, would not be achieved."¹³

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 proposal

is intended to carry out the requirements imposed by Regulation SCI with respect to FINRA's BC/DR testing. When the Commission adopted the mandatory backup testing requirements of Regulation SCI, the Commission recognized that the requirements could have some cost impact on designated firms. It concluded, however, that such costs were justified by the need for SCI entities to prepare for the possibility of wide-scale disruptions in the securities markets.¹⁴

FINRA recognizes that the criteria it announces in its *Regulatory Notice* may impose costs, particularly on those members designated pursuant to the established criteria. However, the Commission noted its belief that the costs of this requirement could be mitigated by the fact that designated members are likely to be larger firms with greater resources.¹⁵ Consistent with the Commission's guidance, FINRA expects that its criteria will mitigate costs by designating larger firms that have greater resources, and likely have experience with the current SIFMA-facilitated industry test, and therefore are more likely to have existing connections to FINRA's backup systems. Moreover, other firms who may anticipate some competitive advantage to participating in the SCI testing are not precluded from doing so by this rule, further mitigating any competitive effects of the rule.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which

⁷ For example, should FINRA change its volume-based criteria, or the specified period of time over which such volume is measured (*i.e.*, the look-back period), it would not apply any of those changes retroactively. Instead, it would only apply such changes, after notice, to the next testing cycle with a full look-back period.

⁸ See SCI Adopting Release, 79 FR at 72351-52.

⁹ FINRA believes, based on preliminary discussions among SCI entities that the yearly testing contemplated by this proposal would likely take the place of the current industry test facilitated by the Securities Industry and Financial Markets Association ("SIFMA") each October. This would be consistent with Commission guidance—Regulation SCI recognized that the existing SIFMA test could provide a foundation for the regulation's mandatory testing requirements. See SCI Adopting Release, 79 FR at 72349.

¹⁰ FINRA anticipates that compliance with this proposal would be enforced consistent with existing FINRA rules and practice, and that a designated firm's failure to participate in mandatory testing could result in possible sanctions, including fines, under FINRA Rule 8310.

¹¹ See SCI Adopting Release, 79 FR at 72351 n.1170 (encouraging SCI entities to permit voluntary participation).

¹² 15 U.S.C. 78o-3(b)(6).

¹³ SCI Adopting Release, 79 FR at 72351 (internal citations omitted).

¹⁴ See SCI Adopting Release, 79 FR at 72348-49. The Commission explained that the designation of larger firms may result in minimal or relatively modest administrative costs because such firms are likely to already have established connectivity to backup sites and to monitor and maintain such connectivity. See *id.*, 79 FR at 72341.

¹⁵ See SCI Adopting Release, 79 FR at 72351.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6).

it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder. A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to incorporate changes required under Regulation SCI, such as establishing standards for designating BC/DR participants, prior to the November 3, 2015 compliance date. Accordingly, the Commission designates the proposed rule change to be operative upon filing.²⁰

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-2015-046 on the subject line.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

²⁰ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-FINRA-2015-046. 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2015-046 and should be submitted on or before December 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-28681 Filed 11-10-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76362; File No. SR-NYSEArca-2015-73]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendments No. 1 and 3, Relating to Listing and Trading of Shares of the Guggenheim Total Return Bond ETF Under NYSE Arca Equities Rule 8.600

November 5, 2015.

On September 1, 2015, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares ("Shares") of the Guggenheim Total Return Bond ETF ("Fund"). On September 15, 2015, the Exchange submitted Amendment No. 1 to the proposal. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on September 22, 2015.³ On September 22, 2015, the Exchange submitted Amendment No. 3 to the proposed rule change.⁴ The Commission received no comment letters on the proposed rule change, as modified by Amendment No. 1.

Section 19(b)(2) of the Act⁵ provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 75930 (September 16, 2015), 80 FR 57251.

⁴ On September 21, 2015, the Exchange submitted and withdrew Amendment No. 2 to the proposal. In Amendment No. 3, the Exchange clarified certain representations regarding the availability of quotation, last sale, and pricing information for the Shares and the instruments in which the Fund may invest. Amendment No. 3 is available at <http://www.sec.gov/comments/sr-nysearca-2015-73/nysearca201573-2.pdf>.

⁵ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).

proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁶ designates December 21, 2015, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR-NYSEArca-2015-73), as modified by Amendments No. 1 and 3.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-28682 Filed 11-10-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76368; File No. SR-NASDAQ-2015-134]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Business Continuity and Disaster Recovery Plans Testing Requirements

November 5, 2015.

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 November 2, 2015, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 adopt business continuity and disaster recovery plans (“BC/DR Plans”) testing requirements applicable to Exchange Members³ and Options Participants⁴ in

connection with Regulation Systems Compliance and Integrity (“Regulation SCI”).⁵

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaq.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

Nasdaq is proposing to adopt new Rule 1170 to implement the BC/DR Plans requirements of Rule 1004 of Regulation SCI. As adopted by the Commission, Regulation SCI applies to certain self-regulatory organizations (including the Exchange), alternative trading systems (“ATs”), plan processors, and exempt clearing agencies (collectively, “SCI entities”), and will require these SCI entities to comply with requirements with respect to the automated systems central to the performance of their regulated activities. Among the requirements of Regulation SCI is Rule 1001(a)(2)(v), which requires the Exchange and other SCI entities to maintain “[b]usiness continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale

disruption.”⁶ The Exchange has put extensive time and resources toward planning for system failures and already maintains robust BC/DR Plans consistent with the Rule. As set forth below, in connection with Regulation SCI, the Exchange is proposing to require certain Members to participate in testing of the operation of the Exchange’s BC/DR Plans.

With respect to an SCI entity’s BC/DR Plans, including its backup systems, paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to:

“[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.”⁷ Paragraph (b) of Rule 1004 of Regulation SCI further requires each SCI entity to “[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months.”⁸ In order to comply with Rule 1004 of Regulation SCI, the Exchange proposes to adopt new Rule 1170, which incorporates the requirements of Rule 1004 of Regulation SCI as part of the Exchange’s rules, and sets forth the notice, selection criteria and obligations of Members and Participants with respect to BC/DR Plans testing. Nasdaq proposes to adopt Rule 1170(a), which will set forth the Exchange’s obligations with respect to the selection of Members and Participants for testing. Specifically, the rule will require Nasdaq to “[e]stablish standards for the designation of those Members and Options Participants that Nasdaq reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.” The proposed new rule further provides that “[s]uch standards may include volume-based and/or market share-based criteria, and may be adjusted from time to time by Nasdaq.” Lastly, the proposed new rule will require Nasdaq to provide public notice of the standards that it adopts.

Nasdaq is proposing to adopt Rule 1170(b), which will set forth the obligations of Nasdaq and its Members

⁶ *Id.*

⁷ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in Nasdaq.” See Exchange Rule 0120(i).

⁴ The term “Options Participant” is defined as a category of Nasdaq Member that is authorized to

“transact business on NOM via the Trading System. Options Participants may trade options for their own proprietary accounts or, if authorized to do so under applicable law, and consistent with these NOM Rules and with applicable law and SEC rules and regulations, may conduct business on behalf of Customers.” See NOM Option Rules, Chapter II, Section 1(a).

⁵ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (“SCI Adopting Release”).

⁶ 17 CFR 242.1001(a)(2)(v).

⁷ 17 CFR 242.1004(a).

⁸ 17 CFR 242.1004(b).

and Participants with respect to testing. Specifically, the rule will require Nasdaq to “designate Members and Options Participants pursuant to the standards established in paragraph (a) of this rule and require participation by such designated Members and Options Participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by Nasdaq, provided that such frequency shall not be less than once every 12 months.” Moreover, the rule will require Nasdaq to provide at least six months prior notice to Members and Participants that are designated for mandatory testing. Lastly, the rule will provide notice that participation in testing is a condition of membership for Members and Participants that are designated for testing.

The Exchange encourages all Members and Participants to connect to the Exchange’s backup systems and to participate in testing of such systems;⁹ however, certain Members and Participants will be obligated to participate in BC/DR Plans testing. In adopting new Rule 1170, the Exchange will require mandatory participation in BC/DR Plans testing by those Members and Participants that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans on the Exchange and NOM, respectively. The Exchange believes that using overall participation on its markets (by volume and/or market share) as a measure to select Members and Participants for mandatory participation in BC/DR Plans testing is a reasonable means by which it can determine which Members and Participants are necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.¹⁰ For each BC/DR Plans test cycle, Nasdaq will select the top ten Members on the Exchange and the top five Participants on NOM based on Nasdaq’s measure of overall

participation on each of those markets. The Exchange will provide notice of a Members’ and Participants’ selection at least six months prior to the next BC/DR Plans test date. All notices concerning BC/DR Plans testing will be posted on Nasdaq’s Web site.

The Exchange is proposing to initially select Members and Participants with the highest levels of trading volume on Nasdaq and NOM over four calendar months (“Measurement Period”) as mandatory testing Members and Participants, respectively.¹¹ Specifically, the Measurement Period will be the four calendar months of trading immediately prior to Nasdaq’s announcement of the next BC/DR Plans test date. The Measurement Period will always begin at a point after Nasdaq announces the criteria to be used in the next BC/DR Plans test. By way of example, if on October 6, 2017 Nasdaq announced the BC/DR Plans test selection criteria and on March 2, 2018 Nasdaq announced a BC/DR Plans test date of September 8, 2018, the Measurement Period used to select Members and Participants subject to mandatory testing would be November 2017 through February 2018. Members and Participants not obligated to participate that wish to participate in this test must inform Nasdaq no later than September 1, 2018.¹²

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,¹³ in general, and further the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal will ensure that the Members and Participants necessary to ensure the maintenance of fair and orderly markets are properly designated consistent with Rule 1004 of Regulation SCI. Specifically, the proposal will

adopt clear and objective criteria with respect to the designation of Members and Participants that are required to participate in the testing of the Exchange’s BC/DR Plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release, “SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI’s requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.”¹⁵ The Exchange believes that this proposal is consistent with such authority and legal responsibility.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange 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, as amended. To the contrary, the proposal is not a competitive proposal but rather is necessary for the Exchange’s compliance with Regulation SCI.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6)(iii) thereunder.¹⁷ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of

⁹ In this regard, Nasdaq will allow any Member or Participant to participate in the testing of the Exchange’s BC/DR Plans, which is consistent with the Plan. See SCI Adopting Release, *supra* note 5 at 72350. Nasdaq will provide instructions on how a Member and Participant must inform Nasdaq of its interest in participating in an upcoming BC/DR Plans test via the announcement of the test date. A Member or Participant must provide Nasdaq notice of its interest to participate at least a week prior to the test date and must have the appropriate connection for testing in place.

¹⁰ Nasdaq will provide notice of the specific selection criteria and measurement period in a notice to Members and Participants. The initial selection criteria and measurement period will be announced no later than November 3, 2015.

¹¹ Nasdaq may change the total number of Members selected from time to time.

¹² See note 9.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ See SCI Adopting Release, *supra* note 5 at 72350.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁸ A proposed rule change filed under Rule 19b-4(f)(6)(iii)¹⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to incorporate changes required under Regulation SCI, such as establishing standards for designating BC/DR participants, prior to the November 3, 2015 compliance date. Accordingly, the Commission designates the proposed rule change to be operative upon filing.²¹

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

¹⁸ 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 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.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2015-134 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-NASDAQ-2015-134. 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2015-134 and should be submitted on or before December 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Robert W. Errett,

Deputy Secretary.

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²² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76366; File No. SR-NYSEMKT-2015-85]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change to the Co-Location Services Offered by the Exchange (the Offering of a Wireless Connection To Allow Users To Receive Market Data Feeds From Third Party Markets) and To Reflect Changes to the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule Related to These Services

November 5, 2015.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 23, 2015, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to change the co-location services offered by the Exchange to include a means for co-located Users to receive market data feeds from third party markets through a wireless connection. In addition, the proposed rule change reflects changes to the NYSE MKT Equities Price List ("Price List") and the NYSE Amex Options Fee Schedule ("Fee Schedule") related to these services. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change the co-location⁴ services offered by the Exchange to include a means for Users to receive market data feeds from third party markets (the “Third Party Data”) through a wireless connection.⁵ In addition, this proposed rule change reflects changes to the Price List and the Fee Schedule related to these co-location services.

The Exchange proposes to offer the wireless connection to provide Users with an alternative means of connectivity for Third Party Data. Wireless connections involve beaming signals through the air between antennas that are within sight of one another. Because the signals travel a straight, unimpeded line, and because

light waves travel faster through air than through glass (fiber optics), wireless messages have lower latency than messages travelling through fiber optics.

Under the proposed rule change, the Exchange would utilize a network vendor to provide a wireless connection to the Third Party Data through wireless connections from the Exchange access centers in Secaucus and Carteret, New Jersey, to its data center in Mahwah, New Jersey, through a series of towers equipped with wireless equipment.⁶ The wireless connectivity would be an optional offering, offering an alternative method for connectivity to the Third Party Data.

A User that chooses this optional service would be able to receive data feeds from NASDAQ and BATS Exchange, Inc. over a wireless connection. To receive Third Party Data, the User would enter into a contract with the relevant third party market, which would charge the User the applicable market data fees for the Third Party Data. The Exchange would charge the User fees for the wireless connection for the Third Party Data.⁷

A User would be charged a \$5,000 non-recurring initial charge for each wireless connection and a monthly recurring charge (“MRC”) that would vary depending upon the feed that the User opts to receive. If a User purchased two wireless connections, it would pay two non-recurring initial charges. The Exchange proposes to waive the first month’s MRC, to allow Users to test the receipt of the feed(s) for a month before incurring any MRCs.

The Exchange proposes that the wireless connections would include the use of one port for connectivity to the Third Party Data. A User will only require one port to connect to the Third Party Data, irrespective of how many of the five wireless connections it orders. If a User that has more than one wireless connection wishes to use more than one port to connect to the Third Party Data,⁸ the Exchange proposes to make such additional ports available for a monthly fee per port of \$3,000.

The Exchange proposes to revise its Price List and the Fee Schedule to reflect fees related to these connections and ports, as follows:

Description	Amount of charge
Wireless connection of BATS Pitch BZX Gig shaped data	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of DirectEdge EDGX Gig shaped data	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of NASDAQ Totalview-ITCH data	\$5,000 per connection initial charge plus monthly charge per connection of \$8,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of NASDAQ BX Totalview-ITCH data	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of NASDAQ Totalview-ITCH and BX Totalview-ITCH data.	\$5,000 per connection initial charge plus monthly charge per connection of \$12,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Port for wireless connection	\$3,000 monthly charge per port, excluding first port.

⁴ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (“Commission”) in 2010. See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80). The Exchange operates a data center in Mahwah, New Jersey (the “data center”) from which it provides co-location services to Users.

⁵ For purposes of the Exchange’s co-location services, a “User” means any market participant that requests to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR-NYSEMKT-2015-67).

As specified in the Price List and the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange’s affiliates New York Stock Exchange LLC and NYSE Arca, Inc. See Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR-NYSEMKT-2013-67).

⁶ The NASDAQ Stock Market LLC (“NASDAQ”) offers a similar wireless service. See Securities Exchange Act Release No. 68735 (January 25, 2013), 78 FR 6842 (January 31, 2013) (SR-NASDAQ-2012-119) (approving a proposed rule change to establish

a new optional wireless connectivity for collocated clients).

⁷ A User would only receive the Third Party Data for which it had entered into a contract. For example, a User that contracted with NASDAQ for the NASDAQ Totalview-ITCH data feed but did not contract to receive any other Third Party Data would receive only the NASDAQ Totalview-ITCH data feed through its wireless connection.

⁸ For example, a User with two wireless connections for Third Party Data may opt to purchase an additional port in order to route the options and equity data it receives to different cabinets.

There is limited bandwidth available on the wireless connection for data feeds from third parties, and so the Exchange has opted to offer only the Third Party Data, which are data feeds that are in high demand from Users. The wireless network offered by the Exchange, although constrained by bandwidth with respect to the number of feeds it can carry, can be made available to an unlimited number of Users.

The Exchange proposes to offer the wireless connection to provide Users with an alternative means of connectivity for Third Party Data. Currently, Users can receive Third Party Data from wireless networks offered by third party vendors.⁹ Users can also receive Third Party Data through other methods, including, for example, from another User, through a telecommunications provider, or over the internet protocol ("IP") network.¹⁰

The wireless connection to the Third Party Data is expected to be available no later than March 1, 2016. The Exchange will announce the date that the wireless connection to the Third Party Data will be available through a customer notice.

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (e.g., a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;¹¹ and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects

only to the Exchange or to the Exchange and one or both of its affiliates.¹²

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(5) of the Act,¹⁴ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed services are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the wireless connection for Third Party Data would provide Users with an alternative means of connectivity for Third Party Data. Users that do not opt to utilize the Exchange's proposed wireless connections would still be able to obtain Third Party Data through other methods, including, for example, from wireless networks offered by third party vendors, another User, through a telecommunications provider, or over the IP network. Users that opt to use wireless connections for Third Party Data would not receive Third Party Data that is not available to all Users, as all market participants that contract with the relevant third party market for the Third Party Data may receive it.

The Exchange believes that this removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest because it would

provide Users with choices with respect to the form and optimal latency of the connectivity they use to receive Third Party Data, allowing a User that opts to receive Third Party Data to select the connectivity and number of ports that better suit its needs, helping it tailor its data center operations to the requirements of its business operations.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁵ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its member organizations, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Overall, the Exchange believes that the proposed change is reasonable because the Exchange proposes to offer wireless connection for Third Party Data described herein as a convenience to Users, but in doing so would incur certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and monitoring, support and maintenance of such services. The costs associated with the wireless connections are incrementally higher than fiber optics-based solutions due to the expense of the wireless equipment, cost of installation and testing and ongoing maintenance of the network.

The Exchange believes that the proposed pricing for the wireless connection for Third Party Data is reasonable because it allows Users to select the Third Party Data connectivity option and number of ports that better suit their needs. The fees also reflect the benefit received by Users in terms of lower latency over the fiber optics option. The Exchange believes that the proposed waiver of the first month's MRC is reasonable as it would allow Users to test the receipt of the feed(s) for a month before incurring any monthly recurring fees and may act as an incentive to Users to utilize the new service.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the services being completely voluntary,

⁹ Currently, at least four third party vendors offer Users wireless network connections using wireless equipment installed on towers and buildings near the data center.

¹⁰ The IP network is a local area network available in the data center. See Securities Exchange Act Release No. 74220 (February 6, 2015), 80 FR 7894 (February 12, 2015) (SR-NYSEMKT-2015-08) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

¹¹ As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

¹² See SR-NYSEMKT-2013-67, *supra* note 5 at 50471. The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2015-52 and SR-NYSEArca-2015-99.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(4).

they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select wireless connections and ports would be charged the same amount for the same services and would have their first month MRC for wireless connections waived.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁶ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users).

The Exchange believes that allowing Users to receive Third Party Data through a wireless connection will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such access will satisfy User demand for additional options for connectivity for Third Party Data. Currently, Users can receive Third Party Data from wireless networks offered by third party vendors. Based on the information available to it, the Exchange believes that its proposed wireless connection would provide data at the same or similar speed and at the same or similar cost as the existing wireless networks. Accordingly, the proposed wireless connection for Third Party Data would provide Users with an additional wireless connectivity option, thereby enhancing competition.

The Exchange notes that the proposed wireless connection would compete not just with other wireless connections, but also with fiber optic networks, which may be more attractive to some Users as they are more reliable and less susceptible to weather conditions. Users

that do not opt to utilize wireless connections would be able to obtain Third Party Data through other methods, including, for example, from another User, through a telecommunications provider, or over the IP network. In this way, the proposed changes would enhance competition by helping Users tailor their connectivity for Third Party Data to the needs of their business operations by allowing them to select the form and optimal latency of the connectivity they use to receive Third Party Data that best suits their needs, helping them tailor their data center operations to the requirements of their business operations.

The proposed wireless connection to the Third Party Data would traverse wireless connections through a series of towers equipped with wireless equipment, including a pole on the grounds of the data center. The proposed wireless network would have exclusive rights to operate wireless equipment on the data center pole. The Exchange will not sell rights to third parties to operate wireless equipment on the pole, due to space limitations, security concerns, and the interference that would arise between equipment placed too closely together. In addition to space issues, there are contractual restrictions on the use of the roof that the Exchange has determined would not be met if it offered space on the roof for third party wireless equipment.

Moreover, access to the pole or roof is not required for third parties to establish wireless networks that can compete with the Exchange's proposed service, as witnessed by the existing wireless networks currently serving Users. Based on the information available to it, the Exchange believes that its proposed wireless connection would provide data at the same or similar speed, and at the same or similar cost, as its proposed wireless connection, thereby enhancing competition.¹⁷

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed

¹⁷ The Exchange notes that the distance of a wireless network provider's wireless equipment from the User is only one factor in determining overall latency. Other factors include the number of repeaters in the route, the number of switches the data has to travel through, and the millimeter wave and switch technology used.

rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2015-85 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-NYSEMKT-2015-85. 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 Web site (<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

¹⁶ 15 U.S.C. 78f(b)(8).

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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2015-85 and should be submitted on or before December 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-28686 Filed 11-10-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76364; File No. SR-NYSEArca-2015-99]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to the Co-Location Services Offered by the Exchange (the Offering of a Wireless Connection To Allow Users To Receive Market Data Feeds From Third Party Markets) and To Reflect Changes to the NYSE Arca Options Fee Schedule and the NYSE Arca Equities Schedule of Fees and Charges Related to These Services

November 5, 2015.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 23, 2015, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to change the co-location services offered by the Exchange to include a means for co-located Users to receive market data feeds from third party markets through a wireless connection. In addition, the proposed rule change reflects changes to the NYSE MKT Equities Price List ("Price List") and the NYSE Amex Options Fee Schedule ("Fee Schedule") related to these services. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change the co-location⁴ services offered by the Exchange to include a means for Users to receive market data feeds from third party markets (the "Third Party Data") through a wireless connection.⁵ In

⁴ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. See Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR-NYSEArca-2010-100). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

⁵ For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEArca-2015-82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York

addition, this proposed rule change reflects changes to the Fee Schedules related to these co-location services.

The Exchange proposes to offer the wireless connection to provide Users with an alternative means of connectivity for Third Party Data. Wireless connections involve beaming signals through the air between antennas that are within sight of one another. Because the signals travel a straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), wireless messages have lower latency than messages travelling through fiber optics.

Under the proposed rule change, the Exchange would utilize a network vendor to provide a wireless connection to the Third Party Data through wireless connections from the Exchange access centers in Secaucus and Carteret, New Jersey, to its data center in Mahwah, New Jersey, through a series of towers equipped with wireless equipment.⁶ The wireless connectivity would be an optional offering, offering an alternative method for connectivity to the Third Party Data.

A User that chooses this optional service would be able to receive data feeds from NASDAQ and BATS Exchange, Inc. over a wireless connection. To receive Third Party Data, the User would enter into a contract with the relevant third party market, which would charge the User the applicable market data fees for the Third Party Data. The Exchange would charge the User fees for the wireless connection for the Third Party Data.⁷

A User would be charged a \$5,000 non-recurring initial charge for each wireless connection and a monthly recurring charge ("MRC") that would vary depending upon the feed that the User opts to receive. If a User purchased two wireless connections, it would pay two non-recurring initial charges. The Exchange proposes to waive the first month's MRC, to allow Users to test the receipt of the feed(s) for a month before incurring any MRCs.

Stock Exchange LLC and NYSE MKT LLC. See Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR-NYSEArca-2013-80).

⁶ The NASDAQ Stock Market LLC ("NASDAQ") offers a similar wireless service. See Securities Exchange Act Release No. 68735 (January 25, 2013), 78 FR 6842 (January 31, 2013) (SR-NASDAQ-2012-119) (approving a proposed rule change to establish a new optional wireless connectivity for collocated clients).

⁷ A User would only receive the Third Party Data for which it had entered into a contract. For example, a User that contracted with NASDAQ for the NASDAQ Totalview-ITCH data feed but did not contract to receive any other Third Party Data would receive only the NASDAQ Totalview-ITCH data feed through its wireless connection.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

The Exchange proposes that the wireless connections would include the use of one port for connectivity to the Third Party Data. A User will only require one port to connect to the Third Party Data, irrespective of how many of

the five wireless connections it orders. If a User that has more than one wireless connection wishes to use more than one port to connect to the Third Party Data,⁸ the Exchange proposes to make such

additional ports available for a monthly fee per port of \$3,000.

The Exchange proposes to revise the Fee Schedules to reflect fees related to these connections and ports, as follows:

Description	Amount of charge
Wireless connection of BATS Pitch BZX Gig shaped data	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of DirectEdge EDGX Gig shaped data	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of NASDAQ Totalview-ITCH data	\$5,000 per connection initial charge plus monthly charge per connection of \$8,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of NASDAQ BX Totalview-ITCH data	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of NASDAQ Totalview-ITCH and BX Totalview-ITCH data.	\$5,000 per connection initial charge plus monthly charge per connection of \$12,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Port for wireless connection	\$3,000 monthly charge per port, excluding first port.

There is limited bandwidth available on the wireless connection for data feeds from third parties, and so the Exchange has opted to offer only the Third Party Data, which are data feeds that are in high demand from Users. The wireless network offered by the Exchange, although constrained by bandwidth with respect to the number of feeds it can carry, can be made available to an unlimited number of Users.

The Exchange proposes to offer the wireless connection to provide Users with an alternative means of connectivity for Third Party Data. Currently, Users can receive Third Party Data from wireless networks offered by third party vendors.⁹ Users can also receive Third Party Data through other methods, including, for example, from another User, through a telecommunications provider, or over the internet protocol (“IP”) network.¹⁰

The wireless connection to the Third Party Data is expected to be available no later than March 1, 2016. The Exchange will announce the date that the wireless connection to the Third Party Data will be available through a customer notice.

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User’s customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (e.g., a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;¹¹ and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.¹²

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(5) of the Act,¹⁴ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market

⁸ For example, a User with two wireless connections for Third Party Data may opt to purchase an additional port in order to route the options and equity data it receives to different cabinets.

⁹ Currently, at least four third party vendors offer Users wireless network connections using wireless equipment installed on towers and buildings near the data center.

¹⁰ The IP network is a local area network available in the data center. See Securities Exchange Act Release No. 74219 (February 6, 2015), 80 FR 7899 (February 12, 2015) (SR-NYSEArca-2015-03)

(notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

¹¹ As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange’s trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange’s trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product

that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

¹² See SR-NYSEArca-2013-80, *supra* note 5 at 50459. The Exchange’s affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2015-52 and SR-NYSEMKT-2015-85.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed services are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the wireless connection for Third Party Data would provide Users with an alternative means of connectivity for Third Party Data. Users that do not opt to utilize the Exchange's proposed wireless connections would still be able to obtain Third Party Data through other methods, including, for example, from wireless networks offered by third party vendors, another User, through a telecommunications provider, or over the IP network. Users that opt to use wireless connections for Third Party Data would not receive Third Party Data that is not available to all Users, as all market participants that contract with the relevant third party market for the Third Party Data may receive it.

The Exchange believes that this removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest because it would provide Users with choices with respect to the form and optimal latency of the connectivity they use to receive Third Party Data, allowing a User that opts to receive Third Party Data to select the connectivity and number of ports that better suit its needs, helping it tailor its data center operations to the requirements of its business operations.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁵ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its member organizations, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Overall, the Exchange believes that the proposed change is reasonable because the Exchange proposes to offer wireless connection for Third Party Data described herein as a convenience to Users, but in doing so would incur certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and monitoring, support and maintenance of such services. The costs associated with the wireless connections are incrementally higher

than fiber optics-based solutions due to the expense of the wireless equipment, cost of installation and testing and ongoing maintenance of the network.

The Exchange believes that the proposed pricing for the wireless connection for Third Party Data is reasonable because it allows Users to select the Third Party Data connectivity option and number of ports that better suit their needs. The fees also reflect the benefit received by Users in terms of lower latency over the fiber optics option. The Exchange believes that the proposed waiver of the first month's MRC is reasonable as it would allow Users to test the receipt of the feed(s) for a month before incurring any monthly recurring fees and may act as an incentive to Users to utilize the new service.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select wireless connections and ports would be charged the same amount for the same services and would have their first month MRC for wireless connections waived.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁶ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in

addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users).

The Exchange believes that allowing Users to receive Third Party Data through a wireless connection will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such access will satisfy User demand for additional options for connectivity for Third Party Data. Currently, Users can receive Third Party Data from wireless networks offered by third party vendors. Based on the information available to it, the Exchange believes that its proposed wireless connection would provide data at the same or similar speed and at the same or similar cost as the existing wireless networks. Accordingly, the proposed wireless connection for Third Party Data would provide Users with an additional wireless connectivity option, thereby enhancing competition.

The Exchange notes that the proposed wireless connection would compete not just with other wireless connections, but also with fiber optic networks, which may be more attractive to some Users as they are more reliable and less susceptible to weather conditions. Users that do not opt to utilize wireless connections would be able to obtain Third Party Data through other methods, including, for example, from another User, through a telecommunications provider, or over the IP network. In this way, the proposed changes would enhance competition by helping Users tailor their connectivity for Third Party Data to the needs of their business operations by allowing them to select the form and optimal latency of the connectivity they use to receive Third Party Data that best suits their needs, helping them tailor their data center operations to the requirements of their business operations.

The proposed wireless connection to the Third Party Data would traverse wireless connections through a series of towers equipped with wireless equipment, including a pole on the grounds of the data center. The proposed wireless network would have exclusive rights to operate wireless equipment on the data center pole. The Exchange will not sell rights to third parties to operate wireless equipment on the pole, due to space limitations, security concerns, and the interference that would arise between equipment placed too closely together. In addition to space issues, there are contractual restrictions on the use of the roof that the Exchange has determined would not

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78f(b)(8).

be met if it offered space on the roof for third party wireless equipment. Moreover, access to the pole or roof is not required for third parties to establish wireless networks that can compete with the Exchange's proposed service, as witnessed by the existing wireless networks currently serving Users. Based on the information available to it, the Exchange believes that its proposed wireless connection would provide data at the same or similar speed, and at the same or similar cost, as its proposed wireless connection, thereby enhancing competition.¹⁷

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2015-99 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-NYSEArca-2015-99*. 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2015-99 and should be submitted on or before December 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-28684 Filed 11-10-15; 8:45 am]

BILLING CODE 8011-01-P

¹⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76375; File No. SR-BX-2015-64]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Price Improving and Post-Only Orders

November 5, 2015.

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 October 30, 2015, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 the Substance of the Proposed Rule Change

The Exchange proposes to remove a "Price Improving Order" and a "Post-Only Order" as eligible order types for entry into the automated system for order execution and trade reporting owned and operated by BX ("System").

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).³

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxbx.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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ The Exchange notes that the distance of a wireless network provider's wireless equipment from the User is only one factor in determining overall latency. Other factors include the number of repeaters in the route, the number of switches the data has to travel through, and the millimeter wave and switch technology used.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is seeking to remove references to "Price Improving Orders" in the Rulebook. Specifically, the Exchange is seeking to amend the following sections of the Rulebook: Chapter III, Section 4, entitled "Prevention of the Misuse of Material Nonpublic Information;" Chapter VI, Section 1, entitled "Definitions," Section 6, entitled "Acceptance of Quotes and Orders" and Section 7, entitled "Entry and Display of Orders;" and Chapter VII, Section 12, entitled "Order Exposure Requirements."

The Exchange is also seeking to remove references to "Post-Only Orders" in the Rulebook. Specifically, the Exchange is seeking to amend the following sections in the Rulebook: Chapter VI, Section 1, entitled "Definitions," Section 6, entitled "Acceptance of Quotes and Orders" and Section 9 entitled "Price Improvement Auction ("PRISM")."

Each order type will be explained in more detail below.

Price Improving Orders

Price Improving Orders are orders to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Today, Price Improving Orders may be entered in increments as small as one cent and are available for display at the minimum price variation ("MPV") in that security and shall be rounded up for sell orders and rounded down for buy orders. Without this order type, market participants would not be able to submit orders or quotes priced between the MPV; those orders or quotes would be rejected.

The Exchange proposes to amend Chapter III, Section 4, entitled "Prevention of the Misuse of Material Nonpublic Information" to remove Price Improving Orders as an example of an order type that would be violative of this rule. The Exchange proposes to remove the definition of a Price Improving Order from the list of order types that are acceptable on BX in Chapter VI, Section I, entitled "Definitions." The Exchange proposes to amend Chapter VI, Section 6, entitled "Acceptance of Quotes and Orders" to remove Price Improving Orders as an acceptable order type. The Exchange proposes to amend Chapter VI, Section 7, entitled "Entry and Display of Orders" to remove language describing the manner in which Price Improving

Orders are displayed in the System. Finally, the Exchange proposes to amend Chapter VII, Section 12, entitled "Order Exposure Requirements" to remove the reference to the exposure time for Price Improving Orders.

Today, Price Improving Orders on BX represent less than 1.5% of the BX volume. The Exchange is removing this order type in connection with its recent filing of a price improving auction (PRISM).⁴ This proposed auction mechanism will offer participants an alternative means of entering price improving interest.

The Exchange believes that PRISM should promote and foster competition and provide more options contracts with the opportunity for price improvement. As a result of the increased opportunities for price improvement, the Exchange believes that participants will use PRISM to increase the number of Public Customer orders that are provided with the opportunity to receive price improvement over the NBBO.

Post-Only Orders

Post-Only Orders are orders that will not remove liquidity from the System. Post-Only Orders are to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another market. Post-Only Orders are evaluated at the time of entry with respect to locking or crossing other orders as follows: (i) If a Post-Only Order would lock or cross an order on the System, the order will be re-priced to \$.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers); and (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the NBBO as reflected in the protected quotation of another market center, the order will be handled pursuant to Chapter VI, Section 7(b)(3)(C). Participants may choose to have their Post-Only Orders returned whenever the order would lock or cross the NBBO or be placed on the book at a price other than its limit price. Post-Only Orders received prior to the opening cross or after market close will be rejected. Post-Only Orders may not have a time-in-force designation of Good Til Cancelled or Immediate or Cancel.

⁴ See Securities Exchange Act Release No. 76301 (October 29, 2015) (SR-BX-2015-032) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Adopt a New Price Improvement Auction, BX PRISM) (not yet published) [sic].

The Exchange proposes to remove the definition of a Post-Only Order from the list of order types that are acceptable on BX in Chapter VI, Section I, entitled "Definitions." The Exchange proposes to amend Chapter VI, Section 6, entitled "Acceptance of Quotes and Orders" to remove Post-Only Orders as an acceptable order type. Finally, the Exchange proposes to amend Chapter VI, Section 9, entitled "Price Improvement Auction ("PRISM")" to remove an explanation on the manner in which Post-Only Orders will interact in the auction process.

Today, the Exchange transacts a small number of Post-Only Orders on BX.⁵ The Exchange adopted the Post-Only Order to encourage displayed liquidity and offer BX market participants greater flexibility to post liquidity on BX. Participants are not utilizing this order type very frequently. As previously mentioned, the Exchange is removing the Price-Improving Order in connection with its recent filing of a price improving auction (PRISM).⁶ This proposed auction mechanism will offer participants a new means of entering price improving interest. Aside from Price-Improving Orders, the Post-Only Order is the only other non-displayed order type currently on BX. At this time, the Exchange proposes to also remove the Post-Only Order from BX which would result in all remaining order types on BX being displayed similar to NASDAQ OMX PHLX LLC ("Phlx") order types.

This proposed rule change would remove Price Improving Orders and Post-Only Orders as acceptable order types for orders or quotes entered into BX's System for all market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by removing Price Improving and Post-Only Orders as acceptable order types for all market participants.

Price-Improving Orders

With the removal of Price Improving Orders, market participants would not

⁵ The Exchange transacted on 90 Post-Only Orders from July through September 2015.

⁶ See note 4.

⁷ 15 U.S.C. 78ff(b).

⁸ 15 U.S.C. 78ff(b)(5).

be able to submit orders or quotes priced between the MPV; those orders would be rejected. Other options exchanges currently do not offer a similar order type.⁹ The Exchange believes that the removal of the Price Improving Order does not otherwise create an impediment to a free and open market. The Exchange believes this proposed amendment is non-controversial. By not accepting Price Improving Orders, BX's true BBO will be transparent. All orders will be disseminated at the prices and sizes submitted by market participants at the time of entry into the System.¹⁰ The Exchange believes that market participants will continue to quote at their best prices and the market will be more transparent. The Exchange believe that despite the removal of the availability and use of Price Improving Orders, the Exchange will remain competitive.

Today, Price Improving Orders are not displayed at their limit price, and Participants are unable to ascertain the BX BBO with certainty. The removal of the Price Improving order type will result in greater transparency. In addition, BX recently received approval for a new auction mechanism, PRISM, which offers Participants an alternative means of entering price improving interest.¹¹

Post-Only Orders

With the removal of Post-Only Orders, market participants would not be able to submit orders or quotes priced between the MPV; those orders would be rejected. Other options exchanges currently do not offer a similar order type.¹² The Exchange believes that the removal of the Post-Only Order does not otherwise create an impediment to a free and open market. The Exchange believes this proposed amendment is non-controversial. By not accepting Post-Only Orders, BX's true BBO will be transparent. All orders will be disseminated at the prices and sizes submitted by market participants at the time of entry into the System.¹³ The Exchange believes that market participants will continue to quote at their best prices and the market will be more transparent. The Exchange believe

⁹ See Phlx and BOX Options Exchange LLC, which do not have a similar type of price improving order.

¹⁰ If this results in a price which locks or crosses an away market, then it will be repriced in accordance with BX Rules at Chapter VI, Section 7(C).

¹¹ See note 4.

¹² See Phlx and BOX Options Exchange LLC, which do not have a similar type of post-only order.

¹³ See note 10.

that despite the removal of the availability and use of Post-Only Orders, the Exchange will remain competitive.

Today, Post-Only Orders are not displayed at their limit price, and Participants are unable to ascertain the BX BBO with certainty. The removal of the Post-Only order type will result in greater transparency. With the removal of both the Price-Improving order type and Post-Only order type, the remaining order types will be displayed.

The Exchange's removal of Price Improving and Post-Only Orders will reduce the complexity surrounding the repricing of such non-displayed order types within the auction mechanism. The Exchange's proposal would result in all orders being displayed on BX and the elimination of non-displayed order types. Notwithstanding the foregoing, the BBO shall be the Best Bid or Best Offer on BX. The BBO is repriced and displayed in accordance with BX Rules at Chapter VI, Section 7(C).

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 Exchange does not believe that the proposal to remove Price Improving Orders as an acceptable Order type creates an undue burden on inter-market competition because despite the removal of Price Improving Orders, BX will remain competitive. By not accepting Price Improving Orders, BX's true BBO will be more transparent. Orders will be disseminated at the prices and sizes submitted by market participants at the time of entry into the System. Market participants would not be able to submit orders or quotes priced between the MPV.

The Exchange does not believe that the proposal to remove Post-Only Orders as an acceptable order type creates an undue burden on inter-market competition because despite the removal of Post-Only Orders, BX will remain competitive. Similarly, by not accepting Post-Only Orders, BX's true BBO will be more transparent. Orders will be disseminated at the prices and sizes submitted by market participants at the time of entry into the System. Market participants would not be able to submit orders or quotes priced between the MPV with the removal of this order type.

The Exchange does not believe that the proposal to remove Price Improving Orders and Post-Only Orders as acceptable order types creates an undue burden on intra-market competition

because the proposed rule change would thereby remove Price Improving Orders and Post-Only Orders as acceptable order types for orders enters into BX's System for all market participants.

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6)¹⁵ thereunder.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁶ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁷ 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 asked the Commission to waive the 30-day operative delay so that the filing can be operative prior to the implementation of BX PRISM. The Exchange states that it intends to launch the newly approved BX PRISM auction without the ability to enter either of these order types. The Exchange further states that BX PRISM will benefit from the transparency of the orders entered into the auction. The Exchange also states that the removal of Post-Only Orders and Price-Improving Orders will reduce complexity surrounding the repricing of such non-displayed order types within BX PRISM. The Commission believes that waiver of the 30-day operative delay is appropriate so that Post-Only Order and Price-Improving Orders may be removed as order types on the Exchange prior to the implementation of BX PRISM. Based on the foregoing, the Commission

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

believes that the waiver of the operative delay is consistent with the protection of investors and the public interest.¹⁸ The Commission hereby grants the waiver and designates the proposal operative upon filing.

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 No. SR-BX-2015-64 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 No. SR-BX-2015-64. 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 Web site (<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 Web site viewing and

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BX-2015-64, and should be submitted on or before December 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-28692 Filed 11-10-15; 8:45 am]

BILLING CODE 8011-01-P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: September 1-30, 2015.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT:

Jason E. Oyler, General Counsel, telephone: (717) 238-0423, ext. 1312; fax: (717) 238-2436; email: joyler@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and (f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR 806.22(e)

1. Downs Racing, LP dba Mohegan Sun Pocono, Mohegan Sun Pocono, ABR-201509001, Plains Township, Luzerne County, Pa.; Consumptive

Use of Up to 0.3500 mgd; Approval Date: September 11, 2015.

Approvals By Rule Issued Under 18 CFR 806.22(f)

1. Anadarko E&P Onshore, LLC, Pad ID: Don J Davis Pad A, ABR-201008028.R1, Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 3, 2015.
2. Chesapeake Appalachia, LLC, Pad ID: Decker Farms, ABR-201009037.R1, Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 3, 2015.
3. Chesapeake Appalachia, LLC, Pad ID: Rocks, ABR-201101003.R1, Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 3, 2015.
4. Chesapeake Appalachia, LLC, Pad ID: Aukema, ABR-201101013.R1, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 3, 2015.
5. Chesapeake Appalachia, LLC, Pad ID: Fausto, ABR-201101015.R1, Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 3, 2015.
6. Chesapeake Appalachia, LLC, Pad ID: Bo, ABR-201101016.R1, Tuscarora Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 3, 2015.
7. Chesapeake Appalachia, LLC, Pad ID: Struble, ABR-201101017.R1, Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 3, 2015.
8. Chesapeake Appalachia, LLC, Pad ID: DJ, ABR-201101021.R1, Wysox Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 3, 2015.
9. Chief Oil & Gas, LLC, Pad ID: Dacheux Drilling Pad #1, ABR-201101014.R1, Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: September 3, 2015.
10. Chief Oil & Gas, LLC, Pad ID: Andrus Drilling Pad #1, ABR-201101023.R1, Granville Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: September 3, 2015.
11. EOG Resources, Inc., Pad ID: KINGSLEY 2H, ABR-20100692.R1, Springfield Township, Bradford

¹⁹ 17 CFR 200.30-3(a)(12).

- County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: September 3, 2015.
12. EOG Resources (PA), Pad ID: KINGSLEY 3H, ABR-20100698.R1, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: September 3, 2015.
 13. EXCO Resources (PA), LLC, Pad ID: Kensinger Unit Drilling Pad #1, ABR-20090922.R1, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 3, 2015.
 14. Seneca Resources Corporation, Pad ID: DCNR Tract 001 1H, ABR-201008142.R1, Sweden Township, Potter County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 3, 2015.
 15. SWN Production Company LLC, Pad ID: Loomis Well No. 2H, ABR-20100504.R1, Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 3, 2015.
 16. SWEPI LP, Pad ID: Synnestvedt 878, ABR-201007009.R1, Osceola Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 3, 2015.
 17. SWEPI LP, Pad ID: Matz 824, ABR-201007010.R1, Chatham Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 3, 2015.
 18. SWEPI LP, Pad ID: Cochran 705, ABR-201007012.R1, Union Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 3, 2015.
 19. SWEPI LP, Pad ID: Frost 573, ABR-201007013.R1, Covington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 3, 2015.
 20. SWEPI LP, Pad ID: Murdock 862, ABR-201007015.R1, Deerfield Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 3, 2015.
 21. SWEPI LP, Pad ID: Taylor 718, ABR-201007016.R1, Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 3, 2015.
 22. SWEPI LP, Pad ID: Wesneski 724, ABR-201007017.R1, Union Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 3, 2015.
 23. SWEPI LP, Pad ID: Thomas 503, ABR-201007050.R1, Sullivan and Rutland Townships, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 3, 2015.
 24. SWEPI LP, Pad ID: Swingle 725, ABR-201007129.R1, Canton Township, Bradford County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 3, 2015.
 25. Anadarko E&P Onshore, LLC, Pad ID: Jack L Hipple Pad A, ABR-201008021.R1, Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 8, 2015.
 26. Anadarko E&P Onshore, LLC, Pad ID: Thomas E Smith Pad A, ABR-201008057.R1, Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 8, 2015.
 27. Anadarko E&P Onshore, LLC, Pad ID: George E Hagemeyer Pad A, ABR-201008077.R1, Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 8, 2015.
 28. Anadarko E&P Onshore, LLC, Pad ID: Nevin L Smith Pad A, ABR-201008115.R1, Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 8, 2015.
 29. Anadarko E&P Onshore, LLC, Pad ID: Kenneth T Schriener Pad A, ABR-201009107.R1, Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 8, 2015.
 30. Carrizo (Marcellus), LLC, Pad ID: Shaskas South, ABR-201011022.R1, Jessup Township, Susquehanna County, Pa.; Consumptive Use of Up to 2.1000 mgd; Approval Date: September 8, 2015.
 31. Carrizo (Marcellus), LLC, Pad ID: Bonnie 2, ABR-201011023.R1, Jessup Township, Susquehanna County, Pa.; Consumptive Use of Up to 2.1000 mgd; Approval Date: September 8, 2015.
 32. Chesapeake Appalachia, LLC, Pad ID: Gerbino #1, ABR-20090710.R1, Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: September 8, 2015.
 33. Chesapeake Appalachia, LLC, Pad ID: Warren #1, ABR-20090711.R1, Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: September 8, 2015.
 34. Chesapeake Appalachia, LLC, Pad ID: Wasyf, ABR-201101002.R1, Ulster Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 8, 2015.
 35. Chesapeake Appalachia, LLC, Pad ID: Beech Flats, ABR-201101012.R1, West Branch and Pike Townships, Potter County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 8, 2015.
 36. Chesapeake Appalachia, LLC, Pad ID: Bustin Homestead, ABR-201101025.R1, Sheshequin Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 8, 2015.
 37. Chesapeake Appalachia, LLC, Pad ID: Beeman, ABR-201101028.R1, Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 8, 2015.
 38. SWEPI LP, Pad ID: Sorensen 876, ABR-201007021.R1, Osceola Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 8, 2015.
 39. SWEPI LP, Pad ID: Westerbaan 723, ABR-201007038.R1, Union Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 8, 2015.
 40. SWEPI LP, Pad ID: State 822, ABR-201007040.R1, Gaines Township, Tioga County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: September 8, 2015.
 41. SWEPI LP, Pad ID: Taft 851, ABR-201007047.R1, Middlebury Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 8, 2015.
 42. SWEPI LP, Pad ID: Baldwin 881, ABR-201007068.R1, Farmington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 8, 2015.
 43. Tenaska Resources, LLC, Pad ID: Sylvester 1H, ABR-20100155.R1, Brookfield Township, Tioga County, Pa.; Consumptive Use of Up to 1.0000 mgd; Approval Date: September 8, 2015.
 44. Tenaska Resources, LLC, Pad ID: NorthFork 1H, ABR-20100158.R1, Brookfield Township, Tioga County, Pa.; Consumptive Use of Up to 1.0000 mgd; Approval Date: September 8, 2015.

45. Tenaska Resources, LLC, Pad ID: Austinburg 1H, ABR-20100313.R1, Brookfield Township, Tioga County, Pa.; Consumptive Use of Up to 1.0000 mgd; Approval Date: September 8, 2015.
46. EOG Resources, Inc., Pad ID: Olsyn 1H, ABR-201509004, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 17, 2015.
47. EOG Resources, Inc., Pad ID: Pichler 1H, ABR-201509003, Jay Township, Elk County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 17, 2015.
48. EOG Resources, Inc., Pad ID: PHC 2H, ABR-201509002, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 17, 2015.
49. SWEPI LP, Pad ID: Maneval 296, ABR-201007056.R1, Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 17, 2015.
50. SWEPI LP, Pad ID: Reese 289, ABR-201007057.R1, Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 17, 2015.
51. SWEPI LP, Pad ID: Harsell 883, ABR-201007066.R1, Nelson Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 17, 2015.
52. SWEPI LP, Pad ID: Wood 874, ABR-201007069.R1, Deerfield Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 17, 2015.
53. SWEPI LP, Pad ID: Sawyer 376, ABR-201007061.R1, Union Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 17, 2015.
54. SWEPI LP, Pad ID: Cleveland 616, ABR-201007089.R1, Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 17, 2015.
55. Cabot Oil & Gas Corporation, Pad ID: Teel P4, ABR-20080701.R1, Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 0.7000 mgd; Approval Date: September 17, 2015.
56. Cabot Oil & Gas Corporation, Pad ID: Teel P3, ABR-20080702.R1, Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 0.7000 mgd; Approval Date: September 17, 2015.
57. Cabot Oil & Gas Corporation, Pad ID: Costello P1, ABR-20080707.R1, Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 0.9000 mgd; Approval Date: September 17, 2015.
58. Cabot Oil & Gas Corporation, Pad ID: Black P1, ABR-20080708.R1, Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5000 mgd; Approval Date: September 17, 2015.
59. Cabot Oil & Gas Corporation, Pad ID: Ely P3, ABR-20080709.R1, Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5000 mgd; Approval Date: September 17, 2015.
60. Cabot Oil & Gas Corporation, Pad ID: Ely P2, ABR-20080722.R1, Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 0.9000 mgd; Approval Date: September 17, 2015.
61. Cabot Oil & Gas Corporation, Pad ID: Lewis P2, ABR-20080802.R1, Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 0.9000 mgd; Approval Date: September 17, 2015.
62. Cabot Oil & Gas Corporation, Pad ID: Lewis P1, ABR-20080803.R1, Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 0.9000 mgd; Approval Date: September 17, 2015.
63. Cabot Oil & Gas Corporation, Pad ID: Costello P2, ABR-20080804.R1, Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 0.9000 mgd; Approval Date: September 17, 2015.
64. Anadarko E&P Onshore, LLC, Pad ID: Wallis Run HC Pad A, ABR-201008078.R1, Cascade Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 28, 2015.
65. Anadarko E&P Onshore, LLC, Pad ID: Michael R Fulkerson Pad A, ABR-201008116.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 28, 2015.
66. Anadarko E&P Onshore, LLC, Pad ID: Frank L Hartley Pad A, ABR-201008144.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 28, 2015.
67. Anadarko E&P Onshore, LLC, Pad ID: Plants Evergreen Farm Pad A, ABR-201009003.R1, Cascade Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 28, 2015.
68. Anadarko E&P Onshore, LLC, Pad ID: COP Tr 685 Pad C, ABR-201009013.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 28, 2015.
69. Anadarko E&P Onshore, LLC, Pad ID: COP Tr 290 Pad A, ABR-201009043.R1, McHenry Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 28, 2015.
70. Anadarko E&P Onshore, LLC, Pad ID: COP Tr 289 Pad E, ABR-201009048.R1, McHenry Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 28, 2015.
71. Anadarko E&P Onshore, LLC, Pad ID: COP Tr 731 Pad A, ABR-201009057.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 28, 2015.
72. Anadarko E&P Onshore, LLC, Pad ID: Gayla D Loch Pad A, ABR-201009083.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: September 28, 2015.
73. Chesapeake Appalachia, LLC, Pad ID: Meng, ABR-201101005.R1, Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 28, 2015.
74. Chesapeake Appalachia, LLC, Pad ID: VRGC, ABR-201101022.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 28, 2015.
75. Chesapeake Appalachia, LLC, Pad ID: Walker, ABR-201101030.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 28, 2015.
76. SWEPI LP, Pad ID: Gee 848V, ABR-201007093.R1, Middlebury Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 28, 2015.
77. Talisman Energy USA Inc., Pad ID: 02 100 Detweiler R, ABR-201008023.R1, Covington

- Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 29, 2015.
78. Talisman Energy USA Inc., Pad ID: 02 203 DCNR 594, ABR–201008042.R1, Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 29, 2015.
79. Talisman Energy USA Inc., Pad ID: Carpenter 03 023, ABR–201008141.R1, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 29, 2015.
80. Talisman Energy USA Inc., Pad ID: DCNR 587 02 003, ABR–201008069.R1, Ward Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 29, 2015.
81. Talisman Energy USA Inc., Pad ID: DCNR 587 02 019, ABR–201008072.R1, Ward Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 29, 2015.
82. Talisman Energy USA Inc., Pad ID: Roy 03 062, ABR–201008089.R1, Wells Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: September 29, 2015.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: November 6, 2015.

Stephanie L. Richardson
Secretary to the Commission.

[FR Doc. 2015–28726 Filed 11–10–15; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Columbia Metropolitan Airport, Columbia, South Carolina.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47151(d), notice is being given that the Federal Aviation Administration (FAA) is considering a request from the Richland-Lexington Airport District to waive the requirement that 51.5 acres of surplus property, located at the Columbia Metropolitan Airport be used for aeronautical purposes. Currently, ownership of the property provides for

protection of FAR Part 77 surfaces and compatible land use which would continue to be protected with deed restrictions required in the transfer of land ownership.

DATES: Comments must be received on or before December 14, 2015.

ADDRESSES: Documents are available for review by prior appointment at the following location: Atlanta Airports District Office, Attn: Rob Rau, South Carolina Planner, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337–2747, Telephone: (404) 305–6748.

Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Rob Rau, South Carolina Planner, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Dan Mann, A.A.E., Executive Director, Richland-Lexington Airport District at the following address: Columbia Metropolitan Airport, 125 A Summer Lake Drive, West Columbia, South Carolina 29170.

FOR FURTHER INFORMATION CONTACT: Rob Rau, South Carolina Planner, Atlanta Airports District Office, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337–2747, (404) 305–6748. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Richland-Lexington Airport District to release 51.5 of surplus property at the Columbia Metropolitan Airport. This singular parcel was originally conveyed to the County of Lexington on April 7, 1947 under the powers and authority contained in the provisions of the Surplus Property Act of 1944 and subsequently transferred to the Richland-Lexington Airport District on July 12, 1962. Currently, this surplus property is located within the Columbia Metropolitan Airport Foreign Trade Zone #124.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Columbia Metropolitan Airport.

Issued in Atlanta, Georgia on November 5, 2015.

Larry F. Clark,

*Manager, Atlanta Airports District Office
Southern Region.*

[FR Doc. 2015–28786 Filed 11–10–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0072]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 40 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before December 14, 2015. All comments will be investigated by FMCSA. The exemptions will be issued the day after the comment period closes.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0072 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to <http://>

www.regulations.gov, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-113, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 40 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

W. Adams

Mr. Adams, 57, has had a prosthetic left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, "If commercial drivers are allowed to drive monocularly. His right has adequate acuity/color/side vision as any 60 year old eye is expected as normal for age group." Mr. Adams reported that he has driven straight trucks for 9 years, accumulating 144,000 miles, tractor-trailer combinations for 13 years, accumulating 1.69 million miles, and buses for 1 year, accumulating 5,000 miles. He holds an operator's license from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David R. Alford

Mr. Alford, 52, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, "Based on my visual assessment Mr. Alford has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Alford reported that he has driven straight trucks for 15 years, accumulating 72,000 miles. He holds an operator's license from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Randy S. Asher

Mr. Asher, 59, has had aphakia in his right eye since childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, "That said, if his vision, visual fields, and color vision tests as documented meet the criteria set forth by those with direct knowledge of commercial vehicle operational visual requirements, then he would seem to have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Asher reported that he has driven straight trucks for 30 years, accumulating 900,000 miles. He holds an operator's license from Nebraska. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Steven W. Barrows

Mr. Barrows, 67, has had a prosthetic right eye since childhood. The visual

acuity in his right eye is no light perception, and in his left eye, 20/15. Following an examination in 2014, his ophthalmologist stated, "Mr. Barrows only has a left eye and has been monocular since 1961. In my opinion, he is safe to continue operating a commercial vehicle." Mr. Barrows reported that he has driven straight trucks for 30 years, accumulating 97,500 miles, and tractor-trailer combinations for 1.5 years, accumulating 30,000 miles. He holds a Class A Commercial Driver's License (CDL) from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Steven A. Blinco

Mr. Blinco, 60, has complete loss of vision in his right eye due to a traumatic incident in 1985. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, "The patient has sufficient vision to perform the driving tasks required to operate commercial vehicle." Mr. Blinco reported that he has driven straight trucks for 40 years, accumulating 800,000 miles, and tractor-trailer combinations for 40 years, accumulating 3.2 million miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles W. Bradley

Mr. Bradley, 53, has had a macular toxoplasmosis scar in his right eye since birth. The visual acuity in his right eye is light perception, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, "It is my opinion that Mr. Bradley has sufficient vision to safely perform the driving tasks required to operate a commercial vehicle." Mr. Bradley reported that he has driven straight trucks for 27 years, accumulating 54,000 miles. He holds an operator's license from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ricky A. Bray

Mr. Bray, 61, has a prosthetic right eye due to a traumatic incident in 1974. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, "It is my opinion, based on the minimum requirements, Ricky Bray has sufficient vision to operate a commercial vehicle." Mr. Bray reported that he has driven straight trucks for 15 years, accumulating 1.88 million miles. He holds an operator's

license from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ryan M. Coelho

Mr. Coelho, 37, has had strabismic amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, "The above findings reveal no significant visual difficulties that will hinder Ryan's ability to perform all driving tasks required to operate a commercial vehicle." Mr. Coelho reported that he has driven straight trucks for 19 years, accumulating 665,000 miles. He holds an operator's license from Rhode Island. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Travis R. Cook

Mr. Cook, 44, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, "I believe that Mr. Cook has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Cook reported that he has driven straight trucks for 9 years, accumulating 450 miles. He holds a Class B CDL from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry P. Davis

Mr. Davis, 68, has a phthisical cornea in his left eye due to a traumatic incident in 2010. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2015, his ophthalmologist stated, "In my opinion, Larry has excellent vision in his right eye and unfortunately because of an on the job trauma has lost all useful vision in his left eye. Larry has a 50-year history of commercial driving and 5 years of commercial driving since his trauma, and has been accident free in the at time [sic]." Mr. Davis reported that he has driven straight trucks for 50 years, accumulating 1.5 million miles, and tractor-trailer combinations for 40 years, accumulating 200,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald S. Fries

Mr. Fries, 43, has had amblyopia in his right eye since childhood. The

visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, "In my opinion, I believe he is able to function well in his duties of driving a truck. He has sufficient vision to perform these duties." Mr. Fries reported that he has driven straight trucks for 10 years, accumulating 25,000 miles, and tractor-trailer combinations for 5 years, accumulating 137,500 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kerrie K. Furbish

Ms. Furbish, 43, has had a retinal detachment in her right eye since 1997. The visual acuity in her right eye is counting fingers, and in her left eye, 20/20. Following an examination in 2015, her optometrist stated, "In summary, it is my opinion that Kerrie Furbish has sufficient vision (in the left eye) to perform the driving tasks required to operate a commercial vehicle." Ms. Furbish reported that she has driven buses for 6 years, accumulating 2,880 miles. She holds a Class C CDL from Maine. Her driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jerry W. Gibson

Mr. Gibson, 70, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2015, his optometrist stated, "Mr. Gibson meets all requirements of vision to perform and operate a commercial vehicle." Mr. Gibson reported that he has driven tractor-trailer combinations for 51 years, accumulating 6.63 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Trevor H. Hilton

Mr. Hilton, 24, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2015, his optometrist stated, "Patient has sufficient corrected vision to perform the driving tasks required to operate a commercial vehicle." Mr. Hilton reported that he has driven tractor-trailer combinations for 3 years, accumulating 90,000 miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael D. Judy

Mr. Judy, 55, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2015, his optometrist stated, "Mr. Judy is amblyopic in his left eye, but in my professional opinion I see no reason he cannot drive a commercial vehicle, especially in light of the fact he has proven he can do so with a 16 year driving history with no accidents on his record." Mr. Judy reported that he has driven straight trucks for 16 years, accumulating 480,000 miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Karen L. Kelly

Ms. Kelly, 44, has had optic atrophy in her left eye since birth. The visual acuity in her right eye is 20/20, and in her left eye, 20/400. Following an examination in 2015, her ophthalmologist stated, "I certify that Karen Kelly has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Ms. Kelly reported that she has driven straight trucks for 20 years, accumulating 100,000 miles. She holds an operator's license from Delaware. Her driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joel H. Kohagen

Mr. Kohagen, 57, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2015, his optometrist stated, "I [sic] my medical opinion, Joel has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Kohagen reported that he has driven straight trucks for 38 years, accumulating 1.41 million miles, and tractor-trailer combinations for 10 years, accumulating 40,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows 1 crash, for which he was not cited and to which he did not contribute, and no convictions for moving violations in a CMV.

Kelly K. Kremer

Mr. Kremer, 58, has a prosthetic left eye due to a traumatic incident in 1995. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, "In my medical opinion Mr. Kremer continues to have sufficient vision to perform the driving tasks required to operate a

commercial vehicle.” Mr. Kremer reported that he has driven straight trucks for 2 years, accumulating 100,000 miles, and tractor-trailer combinations for 38 years, accumulating 4.75 million miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Edward R. Lockhart

Mr. Lockhart, 46, has a prosthetic left eye due to a traumatic incident in 1990. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, “In my opinion, although he has is monocular [*sic*], these tests show Mr. Lockhart has sufficient vision to perform his driving tasks involved in operating a commercial vehicle.” Mr. Lockhart reported that he has driven tractor-trailer combinations for 23 years, accumulating 575,000 miles. He holds an operator’s license from Mississippi. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joshua L. Marasek

Mr. Marasek, 34, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is HM, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, “Josh Marasek has sufficient vision to perform the driving tasks required to operate a commercial vehicle.” Mr. Marasek reported that he has driven straight trucks for 11 years, accumulating 55,000 miles, and tractor-trailer combinations for 11 years, accumulating 1.1 million miles. He holds a Class AM CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rodolfo Martinez, Jr.

Mr. Martinez, 62, has had a macular scar in his right eye since 2009. The visual acuity in his right eye is 20/100, and in his left eye, 20/40. Following an examination in 2014, his optometrist stated, “In my opinion, Mr. Martinez has sufficient vision to perform the driving tasks required to operate a commercial vehicle.” Mr. Martinez reported that he has driven straight trucks for 12 years, accumulating 12,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Arthur J. McClintic

Mr. McClintic, 30, has had refractive amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2015, his optometrist stated, “In my opinion Arthur McClintic has sufficient vision to perform the driving tasks required to operate a commercial vehicle.” Mr. McClintic reported that he has driven straight trucks for 5 years, accumulating 102,000 miles, and tractor-trailer combinations for 5 years, accumulating 15,000 miles. He holds a chauffeur’s license from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dale A. McCoy

Mr. McCoy, 53, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/15, and in his left eye, 20/70. Following an examination in 2015, his optometrist stated, “In my opinion, Dale McCoy has sufficient vision to perform the driving tasks required to operate a commercial vehicle.” Mr. McCoy reported that he has driven straight trucks for 12 years, accumulating 306,000 miles. He holds a Class A CDL from Maine. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gregory G. Miller

Mr. Miller, 51, has complete loss of vision in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/25. Following an examination in 2015, his ophthalmologist stated, “I believe he has sufficient vision to perform driving tasks required to operate a commercial vehicle.” Mr. Miller reported that he has driven tractor-trailer combinations for 33 years, accumulating 2.15 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Zack E. Minielly

Mr. Minielly, 58, has optic nerve atrophy in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2015, his optometrist stated, “Old optic nerve atrophy secondary to blunt trauma @ 14 years old . . . In my professional Opinion [*sic*] Mr. Minielly has the ability to have a CDL.” Mr. Minielly reported that he has driven straight trucks for 20 years,

accumulating 1 million miles. He holds a Class B CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Tobias G. Olsen

Mr. Olsen, 23, has had chronic optic neuropathy in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2015, his ophthalmologist stated, “The patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.” Mr. Olsen reported that he has driven straight trucks for 10 years, accumulating 180,000 miles, tractor-trailer combinations for 6 years, accumulating 60,000 miles. He holds a Class D license from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Elroy Perkins

Mr. Perkins, 65, has complete loss of vision in his left eye due to a traumatic incident in 1980. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his ophthalmologist stated, “Certifies that in his/her medical opinion, you have sufficient vision to perform the driving tasks required to operate a commercial vehicle . . . Patient has excellent vision out of right eye only, and is able to perform driving tasks.” Mr. Perkins reported that he has driven straight trucks for 11 years, accumulating 297,000 miles. He holds an operator’s license from Mississippi. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Roy C. Rogers

Mr. Rogers, 50, has a prosthetic right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, “In my medical opinion Mr. Rogers has sufficient vision to perform the driving task required to operate a commercial vehicle.” Mr. Rogers reported that he has driven straight trucks for 28 years, accumulating 308,000 miles, and tractor-trailer combinations for 24 years, accumulating 360,000 miles. He holds a Class A CDL from West Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael P. Rydzinski

Mr. Rydzinski, 55, has had amblyopia and a color deficiency in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in 2015, his ophthalmologist stated, "Because Mr. Rydzinski was born with these two conditions, I do believe he has made accommodations to drive a commercial vehicle safely and would be able to see a traffic light signal and be able to determine which is red, green, and yellow." Mr. Rydzinski reported that he has driven straight trucks for 14 years, accumulating 182,000 miles. He holds a chauffeur's license from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dale L. Schneider

Mr. Schneider, 51, has a corneal scar in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/15. Following an examination in 2015, his optometrist stated, "In my opinion, I would consider his vision to be sufficient to continue operating commercial vehicles." Mr. Schneider reported that he has driven straight trucks for 4 years, accumulating 1,600 miles, and tractor-trailer combinations for 10 years, accumulating 16,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Keith R. Seabaugh

Mr. Seabaugh, 60, has a prosthetic right eye due to a traumatic incident in 1983. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, "In my opinion that [sic] Mr. Keith Seabaugh's visual deficiency is stable, and he has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle, and that this condition will not adversely affect his ability to operate a commercial motor vehicle safely as long as visual correction is worn." Mr. Seabaugh reported that he has driven straight trucks for 14 years, accumulating 210,000 miles, tractor-trailer combinations for 1 year, accumulating 11,000 miles, and buses for 3 months, accumulating 7,500 miles. He holds an operator's license from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert G. Seils

Mr. Seils, 62, has a corneal scar in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2015, his optometrist stated, "He has had a longstanding decrease in his left eye due to a corneal scar at age 3 . . . I feel that he is safe to operate a commercial vehicle." Mr. Seils reported that he has driven straight trucks for 30 years, accumulating 936,000 miles, and tractor-trailer combinations for 30 years, accumulating 936,000 miles. He holds a Class AM CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Randall C. Stephens

Mr. Stephens, 26, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, "I believe Randall Stephens has sufficient vision for driving a commercial vehicle." Mr. Stephens reported that he has driven tractor-trailer combinations for 3 years, accumulating 75,000 miles. He holds an operator's license from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dale L. Stewart

Mr. Stewart, 56, has had amblyopia secondary to exotropia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2015, his optometrist stated, "I believe this patient has sufficient vision to operate a commercial vehicle on major interstates and road ways." Mr. Stewart reported that he has driven tractor-trailer combinations for 38 years, accumulating 3.99 million miles. He holds a Class CA CDL from Michigan. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he was cited for improper lane use.

Warren S. Supulski

Mr. Supulski, 57, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2015, his optometrist stated, "It is my opinion that Warren has sufficient vision to preform [sic] the driving task required to operate a commercial vehicle." Mr. Supulski reported that he has driven straight trucks for 22 years, accumulating 220,000 miles. He holds a Class B CDL

from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Paul J. Vines

Mr. Vines, 49, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/30, and in his left eye, 20/200. Following an examination in 2015, his optometrist stated, "Mr. Vines has shown sufficient vision for operating a commercial vehicle. In my medical opinion, he has sufficient vision to perform the driving tasks." Mr. Vines reported that he has driven straight trucks for 22 years, accumulating 220,000 miles, and tractor-trailer combinations for 12 years, accumulating 120,000 miles. He holds an operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Hany A. Wagieh

Mr. Wagieh, 40, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, "In my medical opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Wagieh reported that he has driven buses for 8 years, accumulating 368,000 miles. He holds an operator's license from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles W. Williamson

Mr. Williamson, 74, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/25. Following an examination in 2015, his optometrist stated, "Mr. Williamson should have adequate visual acuity to meet the requirements for a CDL." Mr. Williamson reported that he has driven straight trucks for 2 years, accumulating 200,000 miles, and tractor-trailer combinations for 50 years, accumulating 5.75 million miles. He holds a Class A CDL from Oklahoma. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gregory A. Woodward

Mr. Woodward, 65, has a prosthetic left eye due to a traumatic incident in 1980. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, "In my

medical opinion, Mr. Woodward's vision is sufficient for the vision required to operate a commercial vehicle." Mr. Woodward reported that he has driven tractor-trailer combinations for 31 years, accumulating 3.19 million miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Alton R. Young III

Mr. Young, 47, has complete loss of vision in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, "I feel his vision is adequate to drive a commercial vehicle." Mr. Young reported that he has driven tractor-trailer combinations for 8 years, accumulating 832,000 miles. He holds a Class A CDL from Mississippi. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

III. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and put the docket number FMCSA-2015-0072 in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the

facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> and insert the docket number FMCSA-2015-0072 in the "Keyword" box and click "Search." Next, click "Open Docket Folder" button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Dated: November 5, 2015

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015-28741 Filed 11-10-15; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0119]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 13 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) in interstate commerce. The regulation and the associated advisory criteria published in the Code of Federal Regulations as the "Instructions for Performing and Recording Physical Examinations" have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. If granted, the exemptions

would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs for up to 2 years in interstate commerce.

DATES: Comments must be received on or before December 14, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2015-0119 using any of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov. Follow the on-line instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov, at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, or via email at fmcsamedical@dot.gov, or by letter to FMCSA, Room W64-113, Department of Transportation, 1200 New Jersey Avenue SE., Washington,

DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for up to a 2-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statutes allow the Agency to renew exemptions at the end of the 2-year period. The 13 individuals listed in this notice have requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate CMVs in intrastate commerce. The advisory criteria indicate that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person’s condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years,

may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission. To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number “FMCSA-2015-0119” and click the search button. When the new screen appears, click on the blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number “FMCSA-2015-0119” and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to the proposed rulemaking.

Summary of Applications

Christopher Wayne Beaver

Mr. Beaver is a 45 year-old driver in Pennsylvania. He has a history of a single seizure and has remained seizure free since April 2014. He takes anti-seizure medication with the dosage and frequency remaining the same since July 2014. If granted the exemption, he would like to drive a CMV. His

physician states that he is supportive of Mr. Beaver receiving an exemption.

Daniel Gerald Bretz, Jr.

Mr. Bretz is a 40 year-old driver in Pennsylvania. He has a history of a seizure disorder and has remained seizure free since 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Bretz receiving an exemption.

Kenneth Lee Brown

Mr. Brown is a 63 year-old class A CDL holder in Wyoming. He has a history of seizure prior to a meningioma resection in 2003. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Brown receiving an exemption.

Douglas Ray Burkhardt

Mr. Burkhardt is a 54 year-old class B CDL holder in South Dakota. He has a history of a seizure disorder and has remained seizure free since 1991. He takes anti-seizure medication with the dosage and frequency remaining the same since September 2013. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Burkhardt receiving an exemption.

Patrick P. Griffis, Sr.

Mr. Griffis is a 60 year-old driver in Mississippi. He has a history of two seizures and has remained seizure free since February 2015. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Griffis receiving an exemption.

Curtis Alan Hartman

Mr. Hartman is a 50 year-old class B CDL holder in Maryland. He has a history of epilepsy and has remained seizure free since 1997. He takes anti-seizure medication with the dosage and frequency remaining the same since 2002. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Hartman receiving an exemption.

Wendell Frank Headley, Jr.

Mr. Headley is a 31 year-old driver in Missouri. He has a history of a seizure disorder and has remained seizure free since 2007. He takes anti-seizure

medication with the dosage and frequency remaining the same since 2010. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Headley receiving an exemption.

Gregory L. Hrutkay

Mr. Hrutkay is a 66 year-old class A CDL holder in driver in Pennsylvania. He has a history of a seizure disorder and has remained seizure free since 2005. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Hrutkay receiving an exemption.

Trever Bryant Jacobson

Mr. Jacobson is a 33 year-old driver in North Dakota. He has a history of a single seizure prior to benign brain tumor removal in 2012. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Jacobson receiving an exemption.

Michael William Ketchum, Sr.

Mr. Ketchum is a 60 year-old driver in Michigan. He has a history of a single seizure in 1972. He takes anti-seizure medication with the dosage and frequency remaining the same since 2004. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Ketchum receiving an exemption.

Marion Franklin Legg, Jr.

Mr. Legg is a 60 year-old driver in Maryland. He has a history of a single unprovoked seizure in October 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Legg receiving an exemption.

Alvin Clarence Strite

Mr. Strite is a 55 year-old class A CDL holder in Pennsylvania. He has a history of a seizure disorder and has remained seizure free since 2007. He takes anti-seizure medication with the dosage and frequency remaining the same since September 2013. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Strite receiving an exemption.

Thomas B. Vivirito

Mr. Vivirito is a 31 year-old class B CDL holder in Pennsylvania. He has a history of a single unprovoked seizure in 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Vivirito receiving an exemption.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: November 5, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015-28739 Filed 11-10-15; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0336]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 54 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before December 14, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2015-0336 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Fax:* 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-113, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 54 individuals listed in this

notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Ramon Becerra

Mr. Becerra, 44, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Becerra understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Becerra meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

Harry L. Blakely

Mr. Blakely, 52, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Blakely understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Blakely meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Steven J. Bloemker

Mr. Bloemker, 55, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the

past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bloemker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bloemker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Ohio.

Billy J. Bookout

Mr. Bookout, 23, has had ITDM since 1995. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bookout understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bookout meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Oklahoma.

David M. Brady

Mr. Brady, 46, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brady understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brady meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

William G. Bush

Mr. Bush, 62, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or

resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bush understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bush meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Gene D. Carey, Jr.

Mr. Carey, 44, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Carey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

James C. Decker

Mr. Decker, 66, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Decker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Decker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

Richard D. Doherty

Mr. Doherty, 54, has had ITDM since 1974. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting

in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Doherty understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Doherty meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Massachusetts.

Richard N. Dunn

Mr. Dunn, 57, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dunn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dunn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Kansas.

Thomas C. Eklund

Mr. Eklund, 65, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Eklund understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Eklund meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oregon.

Rodney L. Forrister, Jr.

Mr. Forrister, 30, has had ITDM since 1995. His endocrinologist examined him

in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Forrister understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Forrister meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a chauffeur's license from Michigan.

Ronald J. Gasper

Mr. Gasper, 55, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gasper understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gasper meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from South Dakota.

Jeremy J. Giesbrecht

Mr. Giesbrecht, 40, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Giesbrecht understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Giesbrecht meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

David F. Goehring

Mr. Goehring, 57, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Goehring understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Goehring meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Robert J. Golding

Mr. Golding, 47, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Golding understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Golding meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maine.

Ethan T. Heideman

Mr. Heideman, 23, has had ITDM since 2006. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Heideman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Heideman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015

and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Benjamin R. Hickerson

Mr. Hickerson, 33, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hickerson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hickerson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

Timothy J. Hrinak

Mr. Hrinak, 31, has had ITDM since 1994. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hrinak understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hrinak meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Kevin M. Hunt

Mr. Hunt, 31, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hunt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hunt meets the requirements

of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a chauffeur's license from Michigan.

David T. Issler

Mr. Issler, 50, has had ITDM since 1996. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Issler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Issler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

Todd D. Jacquin

Mr. Jacquin, 54, has had ITDM since 2000. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jacquin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jacquin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Carolina.

Bruce E. Kerr

Mr. Kerr, 59, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kerr understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Kerr meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Kentucky.

Mark C. Kucharski

Mr. Kucharski, 38, has had ITDM since 1989. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kucharski understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kucharski meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Colorado.

Philip M. LaPierre

Mr. LaPierre, 49, has had ITDM since 1977. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. LaPierre understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. LaPierre meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Maine.

Mary J. Martin

Ms. Martin, 48, has had ITDM since 2014. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Martin understands diabetes

management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Martin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2015 and certified that she has stable nonproliferative diabetic retinopathy. She holds a Class B CDL from Pennsylvania.

Peter J. Meier

Mr. Meier, 43, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Meier understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Meier meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Terry J. Miller

Mr. Miller, 59, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Miller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Michael E. Morel

Mr. Morel, 59, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or

more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Morel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Hampshire.

Marvin K. Mosley

Mr. Mosley, 49, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mosley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mosley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from South Carolina.

Eric Nieves, Jr.

Mr. Nieves, 44, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Nieves understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nieves meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from New York.

Jerry D. Pearce

Mr. Pearce, 37, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the

assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pearce understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pearce meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Mexico.

George W. Pottle, IV

Mr. Pottle, 55, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pottle understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pottle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maine.

Kenneth A. Prine

Mr. Prine, 57, has had ITDM since 2002. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Prine understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Prine meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Charles R. Ratcliff, Jr.

Mr. Ratcliff, 59, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no

severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ratcliff understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ratcliff meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Joseph B. Ribitzki

Mr. Ribitzki, 38, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ribitzki understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ribitzki meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arkansas.

Roger D. Richey

Mr. Richey, 57, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Richey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Richey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Michael G. Sanchez

Mr. Sanchez, 42, has had ITDM since 2014. His endocrinologist examined him

in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sanchez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sanchez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from California.

Guido J. Scarafoni

Mr. Scarafoni, 67, has had ITDM since 2009. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Scarafoni understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Scarafoni meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Massachusetts.

Jeffrey M. Schleisman

Mr. Schleisman, 29, has had ITDM since 1992. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Schleisman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schleisman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Iowa.

Scott J. Schmidt

Mr. Schmidt, 49, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Schmidt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schmidt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Nebraska.

Lori A. Shaffnit

Ms. Shaffnit, 55, has had ITDM since 2014. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Shaffnit understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Shaffnit meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2015 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Iowa.

Sanampreet Singh

Mr. Singh, 22, has had ITDM since 2008. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Singh understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Singh meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy.

He holds an operator's license from California.

Joshua A. Snyder

Mr. Snyder, 31, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Snyder understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Snyder meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from West Virginia.

Christophe M. Stephens

Mr. Stephens, 43, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stephens understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stephens meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Tennessee.

Michael A. Stille

Mr. Stille, 52, has had ITDM since 1991. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stille understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stille meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist

examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Georgia.

Leonard Tawahongva

Mr. Tawahongva, 56, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tawahongva understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tawahongva meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Arizona.

Edward M. Taylor

Mr. Taylor, 65, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Taylor understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Taylor meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Donald L. Trogdon

Mr. Trogdon, 54, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Trogdon understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Trogdon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Idaho.

Gregory S. Van Hal

Mr. Van Hal, 56, has had ITDM since 1977. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Van Hal understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Van Hal meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable proliferative diabetic retinopathy. He holds an operator's license from Minnesota.

Lazario R. Watkins

Mr. Watkins, 25, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Watkins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Watkins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Carolina.

Eric J. Watson

Mr. Watson, 27, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist

certifies that Mr. Watson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Watson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

William T. White

Mr. White, 47, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. White understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. White meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

J. Ryan Wolf

Mr. Wolf, 39, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wolf understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wolf meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).¹ The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number

¹ Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

FMCSA-2015-0336 and click the search button. When the new screen appears, click on the blue "Comment Now!" button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2015-0336 and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to the proposed rulemaking.

Dated: November 5, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015-28740 Filed 11-10-15; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2012-0033]

Notice of Intent to Grant a Buy America Waiver to the National Railroad Passenger Corporation (Amtrak) for the Use of Eight (8) Non-Domestic Components in Tier III High-Speed Rail Trainsets

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice of intent to grant Buy America waiver.

SUMMARY: : FRA is issuing this notice to advise the public that it intends to grant Amtrak a waiver from FRA's Buy America policy for the use of eight components of Tier III high-speed rail (HSR) trainsets.

DATES: Written comments on FRA's determination to grant Amtrak's Buy

America waiver request should be provided to the FRA on or before November 27, 2015.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FRA–2012–0033. All electronic submissions must be made to the U.S. Government electronic site at <http://www.regulations.gov>. Commenters should follow the instructions below for mailed and hand-delivered comments:

(1) *Web site:* <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) *Fax:* (202) 493–2251;

(3) *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, Room W12–140, Washington, DC 20590–0001; or

(4) *Hand Delivery:* Room W12–140 on the first floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must reference the “Federal Railroad Administration” and include docket number FRA–2012–0033. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. John Johnson, Attorney-Advisor, FRA Office of Chief Counsel, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590, (202) 493–0078, John.Johnson@dot.gov.

SUPPLEMENTARY INFORMATION: FRA is issuing this notice to advise the public that it intends to grant Amtrak a waiver from FRA’s Buy America policy for the use of the following eight components of Tier III high-speed rail (HSR) trainsets: (1) Aluminum car body shells (shell structure/frame-end, floor, roof, side); (2) Integrated cab/CEM structure; (3) vehicle paint; (4) brake control unit;

(5) disc brake equipment; (6) tread brake equipment/tread cleaners; (7) brake valves, and (8) parking brake units (collectively “Components”). The total estimated cost of the Components under this waiver is \$108.3 million, or 6.8 percent of the estimated \$1.6 billion cost for the 28 HSR trainsets and spare Components Amtrak will purchase. Amtrak is seeking a loan under FRA’s Railroad Rehabilitation & Improvement Financing (RRIF) loan program to finance its HSR trainset procurement. FRA believes a waiver is appropriate because domestically-produced HSR Components are not currently available in the United States, and even if they could be produced in the United States, they would not be delivered within a reasonable time. Although FRA is granting Amtrak’s request for these Components, Amtrak’s HSR trainset supplier must assemble the HSR trainsets (other than two (2) prototypes under a previous FRA waiver) in the United States using Components and the other 126 HSR components the supplier or its contractors will manufacture in United States.

The letter granting Amtrak’s request is quoted below:
Bernard F. Reynolds, Vice President—Procurement & Logistics, National Railroad Passenger Corporation, 60 Massachusetts Ave NE., Washington, DC 20002.

Re: Request for Waiver of Buy America Requirement for Components of Next Generation Trainsets

Dear Mr. Reynolds:

This letter is in response to your request dated November 3, 2014, that the Federal Railroad Administration (FRA) grant the National Railroad Passenger Corporation (Amtrak), a waiver from FRA’s Buy America policy applicable to FRA’s Railroad Rehabilitation & Improvement Financing (RRIF) loan program, which follows the requirements of 49 U.S.C. 24405(a). FRA’s Buy America requirement for rolling stock, including HSR trainsets, requires domestic final assembly of the trainsets and that all the components be manufactured in the United States.

FRA may waive the Buy America requirements if FRA finds that: (A) Applying the requirements would be inconsistent with the public interest; (B) the steel, iron, and goods manufactured in the United States are not produced in sufficient and reasonably available amounts or are not of a satisfactory quality; (C) rolling stock or power train equipment cannot be bought or delivered to the United States within a reasonable time; or (D) including

domestic material will increase the cost of the overall project by more than 25 percent.

Amtrak seeks a waiver for the following components of Tier III high-speed rail (HSR) trainsets: (1) Aluminum car body shells (shell structure/frame-end, floor, roof, side); (2) Integrated cab/CEM structure; (3) vehicle paint; (4) brake control unit; (5) disc brake equipment; (6) tread brake equipment/tread cleaners; (7) brake valves, and (8) parking brake units (Components). For the reasons contained in this letter, FRA is granting Amtrak’s request.

Although FRA is granting Amtrak’s request for these eight (8) Components, Amtrak’s HSR supplier or its contractors will manufacture the other 126 HSR components, or 94 percent of all components, in the United States. Amtrak estimates the total cost of the Components under this waiver request is approximately 6.8 percent of the estimated \$1.6 billion cost for the 28 HSR trainsets and spare Components Amtrak will purchase. The cost by component per trainset is:

Component	Estimated cost per trainset
(1) Aluminum car body shells (shell structure/frame-end, roof, side)	\$2,960,000
(2) Integrated cab/CEM structure	\$71,000
(3) Vehicle paint	\$78,000
(4) Brake control unit; (5) disc brake equipment; (6) tread brake equipment/tread cleaners; (7) brake valves, and (8) parking brake units	\$659,000
Total per Trainset	\$3,768,000

In July 2014, Amtrak issued a Request for Proposal for its procurement of HSR trainsets. In October 2014, Amtrak received technical proposals from manufacturers in response to its Request for Proposals. After reviewing the proposals, Amtrak determined there were seven (7) Components of the trainsets’ 134 components that each manufacturer indicated it could not source domestically. On November 3, 2014, Amtrak requested from the FRA a Buy America waiver for these seven (7) components and the HSR trainset paint (discussed in more detail below).

Coordinating with FRA, in February 2015 Amtrak engaged the Department of Commerce’s National Institute of Standards and Technology’s Hollings Manufacturing Extension Partnership (NIST–MEP) to scout for domestic manufacturers of the Components. In its April 2015 report, NIST–MEP did not

identify any suppliers making the exact Components. NIST-MEP did identify a total of 23 potential suppliers that either make products similar to the Components or claim to have the capability to manufacture the Components. FRA asked Amtrak to investigate whether any of the potential suppliers could manufacture the Components. After analyzing the NIST-MEP report and Amtrak's report regarding follow-up discussions with the potential suppliers, FRA finds that none of the potential suppliers currently manufacture the Components.

FRA supports Amtrak's required procurement timeline because the

timeline addresses current capacity constraints on the Northeast Corridor and increasing demand for passenger rail. Further Amtrak's timeline meets FRA's goal of establishing Tier III HSR¹ in the United States as soon as possible. Amtrak wants the HSR trainsets to be in revenue service by 2018. To meet this date, the first body shell deliveries must arrive approximately seventeen (17) months after notice to proceed, which is scheduled for February 2016. Final assembly and 126 of the 134 trainsets' components will be manufactured in the United States. FRA believes that operational Tier III HSR in the United States will increase the attractiveness

for manufacturers to establish more HSR factories in the United States, strengthen the business case for a new domestic HSR trainset industry to develop, stimulate the domestic supply chain, and bring new high quality jobs to the United States. As a result, FRA concludes that none of the NIST-MEP identified suppliers could design, test, manufacture, and deliver the Components to meet Amtrak's FRA-supported timeline, which means they cannot deliver the Components within a reasonable time.

Here is a summary of FRA's analysis based on Amtrak's and NIST-MEP's outreach efforts:

Component	Number of potential suppliers	FRA findings
(1) Car body Shell	12	<ul style="list-style-type: none"> • None of the 12 potential suppliers currently manufacture aluminum car body shells for passenger/HSR trains. • After learning more about the requirements of the project, 6 of 12 potential suppliers expressed that they are not interested in the opportunity. • For the remaining 6 potential suppliers, FRA found at least one of the following applied to each manufacturer. <ul style="list-style-type: none"> ○ inexperience working with aluminum. ○ no experience building passenger/HSR aluminum car bodies. ○ no relevant experience manufacturing aluminum car bodies; and/or. ○ have no equipment to manufacture larger extrusions necessary for HSR car body shell. • FRA estimates that it could take car body shell manufacturers a minimum of 18 to 24 months to establish the required facilities and techniques. As a result, FRA finds the remaining 6 potential suppliers not capable of manufacturing the car body shell within a reasonable time.
(2) Integrated cab/CEM structure	5	<ul style="list-style-type: none"> • None of the 5 potential suppliers currently manufacture CEM structures. • 3 of 5 potential suppliers were not interested in the opportunity after learning more about it. • For the remaining 2 potential suppliers, FRA found at least one of the following applied to each manufacturer. <ul style="list-style-type: none"> ○ no relevant experience manufacturing CEM structures; and/or ○ no experience building passenger/HSR CEM structures or similar relevant experience fabricating aluminum CEM structures. FRA estimates it could take CEM structure manufacturers a minimum of 18 to 24 months to establish the required facilities and techniques. As a result, FRA finds the remaining 2 potential suppliers not capable of manufacturing the CEM structure shell within a reasonable time.
(3) Paint	3	<ul style="list-style-type: none"> • As applied to all 3 potential suppliers. <ul style="list-style-type: none"> ○ Paint must be applied where car body shells are manufactured to protect against corrosion and oxidation while in transit to the U.S. ○ The requirements, including foreign environmental standards, for the trainsets' paint would involve at least one year to develop the paint, have it tested and qualified for this particular use, and then exported. As a result, FRA finds that paint cannot be manufactured and delivered in a reasonable time.
Brake System—(4) Brake Control Unit; (5) Disc Brake Equipment; (6) Tread Brake Equipment/Tread Cleaners; (7) Brake Valves, and (8) Parking Brake Units.	6	<ul style="list-style-type: none"> • For safety critical items such as the brake system, FRA believes the brake system and its components must be supplied by a single, service-proven supplier. • None of the 6 potential suppliers currently manufacture brake systems for HSR trains. • 5 of 6 potential suppliers have no experience manufacturing rail brake systems. <ul style="list-style-type: none"> ○ FRA finds that these 5 potential suppliers cannot supply the brake system. • 1 potential supplier is a major domestic brake system supplier that has experience manufacturing other types of non-HSR passenger rail brake systems. <ul style="list-style-type: none"> ○ FRA estimates it would take at least two years to deliver a HSR brake system.

¹ Tier III HSR trainsets are capable of traveling 220 miles per hour.

Component	Number of potential suppliers	FRA findings
		<ul style="list-style-type: none"> ○ FRA finds that the time to design, test, and manufacture a HSR brake system precludes this manufacturer from delivering the system in a reasonable time.

On November 20, 2014, FRA published on its Web site public notice of Amtrak's waiver request. FRA received thirteen (13) online comments to this notice. Only one of the commenters identified a domestic source for any of the Components. The commenter asserted that the potential supplier identified in the table above is a major domestic brake system supplier and is capable of providing the brake systems. However, as described above, FRA has determined that brake systems are not domestically available for HSR trainsets nor can the one potential supplier deliver a brake system within a reasonable time. Of the thirteen (13) comments, ten (10) commenters were in favor of granting the waiver and three were against granting the waiver. Several of the ten (10) commenters in favor of granting the waiver cited safety as their reason. Many commenters also asserted that granting the waiver would be necessary to establish HSR in the United States and would lay a foundation for future domestic HSR manufacturing.

The three commenters opposing the waiver argued that granting a waiver will lead to more waivers and that manufacturers could produce the HSR trainset components in the United States. Though domestic production of the HSR trainset components for which a waiver has been requested is theoretically possible, FRA believes significant safety, capacity, and technology transfer problems would result. Moreover, the delays to overcome these issues would negatively impact the schedules proposed by Amtrak.

FRA believes a waiver is appropriate because the Components are not manufactured in the United States and because domestically-produced Components meeting the specific safety/service-proven, technical, design, and schedule needs of Amtrak cannot be delivered within a reasonable time. FRA bases its determination on the following:

- All of Amtrak's bidders independently indicated in their responses to Amtrak's Request for Proposal that the Components, other than vehicle paint, could not be sourced domestically. As noted above, the paint may be able to be manufactured domestically but cannot be produced

and exported in time to for use on the car shell components.

- The National Institute of Standards and Technology's Hollings Manufacturing Extension Partnership (NIST-MEP) did not identify any domestic manufacturer currently producing the Components.

- Amtrak conducted extensive outreach with manufacturers NIST-MEP identified as potential future manufacturers for the non-available components. FRA agrees with Amtrak's assertion that even if any of the identified manufacturers would attempt to produce the Components domestically, the Components could not be bought or produced in the United States within a reasonable time.

Pursuant to 49 U.S.C. 24405(a)(4), FRA is publishing notice of its decision to grant Amtrak's waiver request in the **Federal Register** to provide notice of such finding and an opportunity for public comment after which this waiver will become effective. This waiver applies only to the HSR trainset Components, including spares, for Amtrak's HSR trainset procurement as identified in its November 3, 2014 waiver request. Moreover, excluding assembly of prototype trainsets, which have been addressed in a separate waiver, the trainsets must be finally assembled in the United States, and all other components that are not described in this waiver must have been produced in the United States or be the subject of a future waiver.

Questions about this letter can be directed to, John Johnson, Attorney-Advisor, at john.johnson@dot.gov or 202-493-0078.

Sincerely,

Sarah Feinberg
Administrator

Sarah L. Inderbitzin,
Acting Chief Counsel.

[FR Doc. 2015-28708 Filed 11-10-15; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT-OST-2015-0194]

Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Department of Transportation's (DOT) Office of the Secretary (OST) announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that our programs are effective and meet our customers' needs, the Department of Transportation (DOT) seeks to obtain OMB approval of a generic clearance to collect feedback on our service delivery.

DATES: Comments on this notice must be received by January 11, 2016.

ADDRESSES: Your comments should be identified by Docket No. DOT-OST-2015-0194 and may be submitted through one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1-202-493-2251.

- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

All written comments will be available for public inspection on Regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Habib Azarsina, Office of the Chief Information Officer, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202-366-1965 (Voice), 202-366-7870

(Fax), or habib.azarsina@dot.gov (Email).

SUPPLEMENTARY INFORMATION:

Title: Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Department's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insight into customer or stakeholder perceptions, opinions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Department of Transportation and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Feedback or information collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population.

The Department will submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary.
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government.
- The collections are noncontroversial and do not raise issues of concern to other Federal agencies.
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future.
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained.
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the Department (if released, the Department must indicate the qualitative nature of the information).

This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Type of Review: New

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Governments.

Estimated Number of Respondents: 6,000.

Estimated Annual Responses: 2,000.

Estimated Annual Burden Hours: 2,000 hours.

Frequency: One-time requirement.

Issued in Washington, DC, on November 3, 2015.

Patricia Lawton,

DOT Paperwork Reduction Act Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2015-28716 Filed 11-10-15; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT-OST-2015-0221]

60-Day Notice of Request for Renewal of a Previously Approved Collection

AGENCY: Office of the Secretary (OST), Department of Transportation (Department) or (DOT).

ACTION: Notice and requests for comments.

SUMMARY: The OSDDBU invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew an information collection. The collection involves the following form with an expiration date of 2/29/2016, and is presently in use.

DATES: Please submit comments by January 12, 2016.

ADDRESSES: You may submit comments [identified by Docket No. DOT-OST-2015-0221] through one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail or Hand Delivery:* U.S.

Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue SE., West Building, Room W12-140, Washington, DC 20590.

• *Agency Web site:* <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Michelle Harris, 202-366-1930 ext. 62253, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W56-444, Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: SBTRC Regional Field Offices Intake Form (DOT F 4500).

OMB Control Number: 2105-0554.

Background: In accordance with Public Law 95-507, an amendment to the Small Business Act and the Small Business Investment Act of 1953, OSDDBU is responsible for the implementation and execution of DOT activities on behalf of small businesses, in accordance with Section 8, 15 and 31 of the Small Business Act (SBA), as amended. The Office of Small and Disadvantaged Business Utilization also administers the provisions of Title 49, of the United States Code, Section 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach, and financial services on behalf of small and disadvantaged businesses and those certified under CFR 49 parts 23 and or 26 as Disadvantaged Business Enterprises (DBE).

SBTRC's Regional Field Offices will collect information on small businesses, which includes Disadvantaged Business Enterprise (DBE), Women-Owned Small Business (WOB), Small Disadvantaged Business (SDB), 8(a), Service Disabled Veteran Owned Business (SDVOB), Veteran Owned Small Business (VOSB), HubZone, and types of services they seek from the Regional Field Offices. Services and responsibilities of the Field Offices include business analysis, general management & technical assistance and training, business counseling, outreach services/

conference participation, short-term loan and bond assistance. The cumulative data collected will be analyzed by the OSDBU to determine the effectiveness of services provided, including counseling, outreach, and financial services. Such data will also be analyzed by the OSDBU to determine agency effectiveness in assisting small businesses to enhance their opportunities to participate in government contracts and subcontracts.

We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104-13.

Title: Small Business Transportation Resource Center Regional Field Office Intake Form (DOT F 4500).

Form Numbers: DOT F 4500.

Type of Review: Renewal of an information collection.

The Regional Field Offices Intake Form, (DOT F 4500) is used to enroll small business clients into the program in order to create a viable database of firms that can participate in government contracts and subcontracts, especially those projects that are transportation related. Each area on the fillable pdf form must be filled in electronically by the Field Offices and submitted every quarter to OSDBU. The Offices will retain a copy of each Intake Form for their records. The completion of the form is used as a tool for making decisions about the needs of the business, such as; referral to technical assistance agencies for help, identifying the type of profession or trade of the business, the type of certification that the business holds, length of time in business, and location of the firm. This data can assist the Field Offices in developing a business plan or adjusting their business plan to increase its ability to market its goods and services to buyers and potential users of their services.

Respondents: SBTRC Regional Field Offices.

Estimated Number of Respondents: 100.

Frequency: The information will be collected quarterly.

Estimated Number of Responses: 100.

Estimated Total Annual Burden on Respondents: 600 hours per year.

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 the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to

enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, by the use of electronic means, including the use of automated collection techniques or other forms of information technology. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on November 5, 2015.

Michelle Harris,

Manager, Regional Assistance Division, Office of Small and Disadvantaged, Business Utilization.

[FR Doc. 2015-28714 Filed 11-10-15; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Supporting Statement of Ownership for Overdue United States Bearer Securities

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Supporting Statement of Ownership for Overdue United States Bearer Securities.

DATES: Written comments should be received on or before January 11, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for further information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4-A, Parkersburg, WV 26106-1328, or bruce.sharp@fiscal.treasury.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Ron Lewis; 200 Third Street Room 515, Parkersburg, WV 26106-1328, or ron.lewis@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Title: Supporting Statement of Ownership for Overdue United States Bearer Securities

OMB Number: 1530-0045 (Previously approved as 1535-0102 as a collection conducted by Department of the Treasury/Bureau of the Public Debt.)

Transfer of OMB Control Number: The Bureau of Public Debt (BPD) and the Financial Management Service (FMS) have consolidated to become the Bureau of the Fiscal Service (Fiscal Service). Information collection requests previously held separately by BPD and FMS will now be identified by a 1530 prefix, designating Fiscal Service.

Form Numbers: FS Form 1071.

Abstract: The information is requested to establish ownership and support a request for payment.

Current Actions: Revision of a previously approved collection.

Type of Review: Regular.

Affected Public: Households and Individuals or Private Sector.

Estimated Number of Respondents: 800.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 200.

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.

Dated: November 5, 2015.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2015-28596 Filed 11-10-15; 8:45 am]

BILLING CODE 4810-AS-P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****Sanctions Actions Pursuant to Executive Orders 13224**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of two individuals and four entities whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: OFAC's actions described in this notice are effective on November 5, 2015.

FOR FURTHER INFORMATION CONTACT:

Associate Director for Global Targeting, tel.: 202/622-2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622-2490, Assistant Director for Licensing, tel.: 202/622-2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622-2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:**Electronic and Facsimile Availability**

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (www.treasury.gov/ofac). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

Notice of OFAC Actions

On November 5, 2015, OFAC blocked the property and interests in property of the following two individuals and four entities pursuant to E.O. 13224, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism":

Individuals

1. SERHAN, Fadi Hussein (a.k.a. SARHAN, Fadi Husayn; a.k.a. SIRHAN, Fadi), Own Building, Kanisat Marmkhael, Saliba Street, Corniche, Al-Mazraa, Beirut, Lebanon; Jaafar Building, Mazraa Street, Beirut, Lebanon; Jaafar Building, Mseytbi Street, Beirut, Lebanon; Jaafar Building, Salim Slam Street, Beirut, Lebanon; Jishi Building, Salim Slam Street,

Beirut, Lebanon; Own Building, Main Street, Kfar Kila, Lebanon; DOB 01 Apr 1961; POB Kfar Kila, Lebanon; nationality Lebanon; Gender Male; Passport RL0962973 (Lebanon) (individual) [SDGT] (Linked To: HIZBALLAH).

2. CHERRI, Adel Mohamad (a.k.a. CHERRI, Adel Mohammad; a.k.a. SHIRRI, 'Adil), Suite 15A, Mingshang GE Shenganghao Yuan Building, Bao AN Nan Road, Luohu District, Shenzhen, Guangdong, China; 1/F, Bei Fang Building, Shennan Zhong Road, Shenzhen, Guangdong, China; Flat/Room 1610, Nan Fung Tower, 173 Des Voeux Road Central, Hong Kong; Cherri Building, Main Street, Beer Al Salasel, Kherbet Selem, Nabatieh, Lebanon; DOB 03 Oct 1963; POB Beirut, Lebanon; Gender Male; Passport RL2566575 (Lebanon) expires 03 Jul 2018 (individual) [SDGT] (Linked To: HIZBALLAH).

Entities

3. VATECH SARL (a.k.a. VATECH; a.k.a. VATECH LEBANON; a.k.a. VATECH VIDEO AND PRO AUDIO), P.O. Box 14-5728, Jishi Building, Salim Slam Street, Mazraa, Beirut, Lebanon; P.O. Box 14-5728, Borj al Salam Building, Salim Slam Street, Beirut, Lebanon; Jaafar Building, Mazraa Street, Beirut, Lebanon; Jaafar Building, Moseitbi Street, Beirut, Lebanon; Jaafar Building, Salim Slam Street, Mazraa, Beirut, Lebanon; Jishi Building, Mazraa Street, Beirut, Lebanon; Web site www.vatech.com.lb [SDGT] (Linked To: SERHAN, Fadi Hussein).

4. LE-HUA ELECTRONIC FIELD CO. LIMITED (a.k.a. LE-HUA ELEC F CO. LTD), Room B, 5/F, Building 2, Guilong Jiayuan Gui Yuan North Road, Guiyuan Neighborhood St Office, Luohu District, Shenzhen, Guangdong, China; 15th Floor, Ming Shang Ge Building, Bao'an Street, Luo Hu Area, Shenzhen, Guangdong, China; Flat/Room 1610, Nan Fung Tower, 173 Des Voeux Road Central, Hong Kong [SDGT] (Linked To: CHERRI, Adel Mohamad).

5. AERO SKYONE CO. LIMITED (a.k.a. AERO SKY ONE LTD; a.k.a. AEROSKYONE CO. LTD), Tianhe Qu, Tianhe Bei Lu, 255 Hao, 1606 Fang, Guangzhou, China; Room 1501 (340), 15/F, SPA Center, 53-55 Lockhart Road, Wan Chai, Hong Kong; Room 1501 (340), Lockhart, Wan Chai, Hong Kong; Web site www.aerskyone.com [SDGT] (Linked To: ZEAITER, Ali).

6. LABICO SAL OFFSHORE (a.k.a. LABICO SAL (OFF SHORE)), Bou Ghannam Building, Azhar Street, Kobbe Doha, Aramoun, Aaley, Lebanon; Labico Building, Azhar Street, Aramoun, Aaley,

Lebanon [SDGT] (Linked To: ZEAITER, Ali).

Dated: November 5, 2015.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015-28702 Filed 11-10-15; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF VETERANS AFFAIRS**Advisory Committee on Former Prisoners of War; Notice of Meeting**

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., App.2, that the Advisory Committee on Former Prisoners of War (FPOW) will meet on January 11-13, 2016. The first two meetings will be held on January 11-12 from 9:00 a.m. to 4:00 p.m. at the Audie Murphy VA Medical Center, 7400 Merton Minter BLVD, San Antonio, TX. The third meeting will be held on January 13 from 9:00 a.m. to 12:00 p.m. at the Courtyard Marriott, 8585 Marriott Dr., San Antonio, TX.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for Veterans who are former prisoners of war, and to make recommendations on the needs of such Veterans for compensation, health care, and rehabilitation.

The Committee will hear from its Chairman. The Committee will also receive briefings by representatives from Veterans Benefits Administration and Veterans Health Administration. On Monday, January 11 from 9:00 a.m. to 11:00 a.m., the Committee will meet in open session. From 11:00 a.m. to 12:00 p.m., the Committee will convene a closed session in order to protect patient privacy as the Committee tours the VA Medical Center. 5 U.S.C. 552b(c)(6). In the afternoon from 1:00 p.m. to 4:00 p.m., the Committee will reconvene in open session. On Tuesday, January 12, the Committee will convene in an open session. At 3:30 p.m., the Committee will host an open public forum and FPOW panel to gain information from FPOWs about their experiences, issues, and recommendations for health benefits and claims processing. Participation is limited to FPOWs. On January 13, the Committee will convene in open session. The Committee will draft the beginning of their 2016 recommendations and decide the location of their next meeting in the spring.

Former Prisoners of War who wish to speak at the public forum are invited to submit a 1–2 page summary of their comments at the end of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Mr. Eric Robinson, Designated Federal Officer, Advisory Committee on Former Prisoners of War, (and Program Analyst Compensation Service), Department of Veterans Affairs, 810 Vermont Avenue NW., (212), Washington, DC 20420, or via email at eric.robinson3@va.gov. Any member of the public seeking additional information should contact Mr. Robinson via email or call (202) 443–6016.

Dated: November 6, 2015.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2015–28725 Filed 11–10–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2 that the Advisory Committee on Minority Veterans will meet on December 1–3, 2015, at the Department of Veterans Affairs, 810 Vermont Avenue NW., Conference Room 230, Washington, DC. On December 1st and 2nd, the sessions will begin at 8:00 a.m. and end at 5:00 p.m. On December 3rd, the session will reconvene at 8:00 a.m. and adjourn at 1:00 p.m. This meeting is open to the public.

The purposes of the Committee are to: advise the Secretary on the administration of VA benefits and services to minority Veterans; assess the needs of minority Veterans; and evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee makes recommendations to the Secretary regarding such activities.

On December 1, the Committee will receive briefings and updates from the Center for Minority Veterans, Office of Health Equity, National Center for Veterans Analysis, Office of Tribal Government Relations (OTGR), MyVA Initiative, and Veterans Benefits Administration. On December 2, the Committee will receive briefings and updates on the National Cemetery Administration (NCA), Mental Health

Services, Veterans Economic Community Initiative, Women's Health Services, Office of Rural Health, Veterans Health Administration (VHA), and Homeless Programs. On December 3, the Committee will receive a briefing and update on Office of Diversity & Inclusion, Ex-Officios Update and hold an exit briefing with VBA, VHA and NCA. The Committee will receive public comments from 10:00 a.m. to 10:15 a.m. After public comments, the Committee will continue to work on their report.

A sign-in sheet for those who want to give comments will be available at the meeting. Individuals who speak are invited to submit a 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Ms. Juanita Mullen, Department of Veterans Affairs, Center for Minority Veterans (00M), 810 Vermont Avenue NW., Washington, DC 20420, or email at

Juanita.Mullen@va.gov. Because the meeting will be in a Government building, anyone attending must be prepared to show a valid photo ID for checking in. Please allow 15 minutes before the meeting begins for this process. Any member of the public wishing to attend or seeking additional information should contact Ms. Mullen or Ms. Denise Wright at (202) 461–6191 or by fax at (202) 273–7092.

Dated: November 6, 2015.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2015–28724 Filed 11–10–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0002]

Agency Information Collection (Statement of Accredited Representative in Appealed Case) Under OMB Review

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Board of Veterans' Appeals (BVA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The

PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 14, 2015.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to oir_submission@omb.eop.gov. Please refer to “OMB Control No. 2900–0002” in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email crystal.rennie@va.gov. Please refer to “OMB Control No. 2900–0002” in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Statement of Accredited Representative in Appealed Case.

OMB Control Number: 2900–0002.

Type of Review: Extension of a currently approved collection.

Abstract: A recognized organization, attorney, agent, or other authorized person representing VA claimants before the Board of Veterans' Appeals complete VA Form 646 to provide identifying data describing the basis for their claimant's disagreement with the denial of VA benefits. VA uses the data collected to identify the issues in dispute and to prepare a decision responsive to the claimant's disagreement.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 48138 on August 7, 2015.

Affected Public: Individuals or households.

Estimated Annual Burden: 50,286.

Estimated Average Burden per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50,286.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–28615 Filed 11–10–15; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

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November 12, 2015

Part II

Department of Justice

Drug and Enforcement Administration

Perry County Food & Drug Decision and Order; Notice

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 15–10]

Perry County Food & Drug Decision and Order

On May 13, 2015, Chief Administrative Law Judge (CALJ) John J. Mulrooney, Jr., issued the attached Recommended Decision (hereinafter, cited as R.D.¹). Thereafter, on June 15, 2015, the CALJ forwarded the record to this Office for Final Agency Action noting that neither party had filed exceptions to the Recommended Decision. *See* 21 CFR 1316.66 (providing a party with the right to file exceptions to an ALJ's decision "[w]ithin twenty days after the date upon which [it] is served [with] a copy").

Subsequently, on July 8, 2015, Respondent filed with this Office a pleading entitled as its "Closing Brief." In a letter accompanying the filing, Respondent's counsel explained that the Recommended Decision had been mailed to his former address and that he had recently changed his address and had "only recently received" the CALJ's Recommended Decision. Letter of Respondent's Counsel to Acting Deputy Administrator, DEA (July 8, 2015).

Upon reviewing the letter, I noted that while Respondent's Counsel had explained that he had only recently received the Recommended Decision because it had been mailed to his former address, his filing was nonetheless untimely. Order of the Acting Administrator, at 1 (July 13, 2015). I therefore directed Respondent's Counsel to explain why "this constitute[d] good cause"; I also directed Respondent's Counsel to address why he did not notify the Office of Administrative Law Judges (OALJ) of his new address, as well set forth the date on which he received the decision. *Id.*

In response, Respondent's Counsel explained that he was "not now attempting to add exceptions to the record," that he had previously received the decision on May 13, 2015, and that he "had not filed any exceptions to it due to [his] understanding that exceptions are not necessary under the regulations." Letter of Respondent's Counsel to Acting Administrator, at 1 (July 14, 2015). Respondent's Counsel further explained that he had sent his previous letter to the Acting Deputy Administrator because he had received a copy of the CALJ's letter transmitting

the record, and that he sent his letter "in an abundance of caution due to [his] misunderstanding of the purpose of" the CALJ's letter, as he "did not want the fact that [he] had not filed any exceptions . . . to preclude" this Office from "perform[ing] an independent review of the record and Decision." *Id.* at 1–2.

Taking Respondent's Counsel at his word, I do not consider the filing submitted on July 8, 2015. However, in reviewing the record, I have considered the "Closing Brief" Respondent's Counsel submitted on April 27, 2015, following the conclusion of the evidentiary phase of the proceeding.

Having considered the entire record in this matter, I have decided to adopt the factual findings of the Recommended Decision except as discussed below.² I also adopt but modify the CALJ's legal conclusions as discussed below.³ Because I agree with the CALJ's conclusion that Respondent's evidence as to its acceptance of responsibility and remedial measures is not persuasive, I further adopt the CALJ's Recommendation to the extent that it recommends that I deny any pending application to renew its registration.⁴

In this matter Respondent stipulated (and other evidence shows) that its Pharmacist-in-Charge, Chris Watson, who is also the son of its owner Tom Watson, committed multiple acts resulting in the diversion of controlled substances. These include:

(1) Dispensing controlled substances including hydrocodone (a schedule II

drug) to A.R. without a prescription. Stipulation 13. Additional record evidence shows that on nine occasions between June 18, 2014 and December 29, 2014, Respondent dispensed controlled substances including hydrocodone and oxycodone (also a schedule II drug) to A.R. listing a dentist (Dr. Hambuchen) as the prescriber. GX 4. However, Dr. Hambuchen denied knowing A.R. (GX 3) and testified to this in the proceeding. Tr. 23. The parties further stipulated that Dr. Hambuchen never issued a prescription for A.R. ALJ Ex. 15, at 4. Each of these acts constitutes an outright drug deal in violation of 21 U.S.C. 841(a)(1), which provides that "[e]xcept as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally . . . to distribute[] or dispense . . . a controlled substance[.]" *See also id.* § 842(a)(1) ("It shall be unlawful for any person . . . who is subject to the requirements of part C to distribute or dispense a controlled substance in violation of section 829 of this title[.]"); *id.* § 829(a).⁵

(2) A. Dispensing hydrocodone and alprazolam to Ms. Samantha Pemberton, who the evidence shows was Chris Watson's girlfriend, on November 19, 2014, without a prescription for either drug. Stipulation 19. For the same reasons as described above, these dispensings also constitute violations of 21 U.S.C. 841(a)(1). *See also* 21 U.S.C. 842(a)(1); *id.* § 829(b).⁶

B. The evidence also shows that on November 19, 2014, Ms. Pemberton was stopped for driving a vehicle without a license plate. ALJ Ex. 20, at 9. During a consensual search of Ms. Pemberton's purse, a police officer found both Xanax (in an unmarked vial) and hydrocodone, and took Ms. Pemberton into custody. *Id.* at 10. During several interviews, Ms. Pemberton claimed that she had a prescription for both drugs. *Id.* She also stated that she had just filled prescriptions for the drugs at

² The United States Supreme Court has explained my obligations under the Administrative Procedure Act, as well as the role of the ALJ's recommended decision, in reviewing the record and making factual findings. *See Universal Camera Corp. v. NLRB*, 340 U.S. 474, 496 (1951) ("The 'substantial evidence' standard is not modified in any way when the Board and its examiner disagree. . . . The findings of the examiner are to be considered along with the consistency and inherent probability of testimony. The significance of his report, of course, depends largely on the importance of credibility in the particular case.") (emphasis added). The standard of review of an agency decision is also well settled. Accordingly, I decline to publish the ALJ's discussion of the substantial evidence test and the standard of review.

³ I do not adopt the ALJ's statement (at R.D. 49) that "Regarding Factor 2, in requiring an examination of a registrant's experience in dispensing controlled substances, Congress manifested an acknowledgement that . . . the quantitative volume in which an applicant has engaged in the dispensing of controlled substances may be [a] significant factor[] to be evaluated" in the public interest determination. *See JM Pharmacy Group, Inc., d/b/a Farmacia Nueva and Best Pharma Corp.*, 80 FR 28667, 28667–68 n.2 (2015); *see also Syed Jawed Akhtar-Zaidi, M.D.*, 80 FR 42962, 42967–68 (2015).

⁴ Because I find that Respondent's registration has expired, *see infra* note 16, I do not adopt the ALJ's recommendation that I revoke its registration.

⁵ 21 U.S.C. 829(a) sets forth the prescription requirement applicable to the dispensing of a schedule II drug. It provides, in relevant part, that: "[e]xcept when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule II, which is a prescription drug . . . may be dispensed without the written prescription of a practitioner, except [for] in emergency situations, as prescribed . . . by regulation," allowing for an oral prescription. *See also* 21 CFR 1306.11(a).

⁶ 21 U.S.C. 829 (b) sets forth the prescription requirement applicable to the dispensing of a schedule III or IV drug. It provides that "[e]xcept for when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substances in schedule III or IV, which is a prescription drug . . . may be dispensed without a written or oral prescription." *See also* 21 CFR 1306.21(a).

¹ All citations to the Recommended Decision are to the slip opinion as issued by the CALJ.

Respondent and had received them in unmarked bottles; however, she could not name the prescriber. *Id.*

C. The evidence further shows that during the course of the police investigation of how Ms. Pemberton had obtained the controlled substances, Chris Watson admitted to a Detective that Pemberton had been in Respondent that morning and that he provided the drugs without prescriptions. *Id.* at 11. Watson then stated that he had “‘loaned’ her some pills . . . ‘because she was out,’” but then asserted that “‘we are just waiting on [the doctor’s office] to call back because that office is notoriously slow.’” *Id.* However, according to the credited testimony of the Detective who interviewed Watson, Watson gave him “‘conflicting information about the identity of Ms. Pemberton’s prescribing physician,” initially stating that it was a Dr. Humbar. *Id.* at 12. While Watson agreed to provide the Detective with a copy of the prescriptions, the next day, he faxed over copies of the dispensing labels (but not the actual prescriptions), which indicated that the prescriptions had been filled on October 9, 2014 (and not November 19, 2014), and the labels indicated that the prescriber was a different doctor (Dr. Arnold) than reported by Watson. *Id.* Moreover, the labels for both drugs showed that no refills were authorized. *Id.*

D. The next day, the Detective again called Respondent and spoke with Chris Watson seeking the prescriptions. *Id.* After Watson stated that he had faxed over the labels, the Detective told Watson that he needed the prescriptions. *Id.* Watson stated that he would have one of the pharmacy technicians look up the prescriptions and send it to the Detective; later that day, the Detective received a fax which appeared to list called-in prescriptions. *Id.* at 13. While the document listed a prescription for Ms. Pemberton, the date appeared to be either October 4 or October 9, 2014 and not November 19, 2014. *Id.*

E. Subsequently, Ms. Pemberton provided the Detective with copies of two prescriptions; the prescriptions listed the date of issuance as October 9, 2014 and Dr. Arnold as the prescriber. *Id.* However, according to the stipulated testimony of a DEA Task Force Officer who interviewed Dr. Arnold, Arnold “‘stated that he had never prescribed any controlled substances for Ms. Pemberton.’” ALJ Ex. 20, at 19. Thus, even the October prescriptions were fraudulent.⁷

⁷ I decline, however, to adopt the CALJ’s further finding that Chris Watson’s actions in “generating

(3)A. Distributing controlled substances, including one 1,000-count bottle of hydrocodone 10/325 mg and two bottles of 100-count methadone 10 mg methadone, to one Eric Horton, on or about January 20, 2015, who was arrested following a traffic stop. Respondent stipulated that each of the bottles had Respondent’s pharmacy stock stickers on it. Stipulation 21.

B. The evidence also includes snapshots from Respondent’s surveillance video camera which show that on January 20, 2015, both Chris Watson and Eric Horton were inside the pharmacy, in the area where it stored its drugs. GX 36. The evidence shows Watson taking a stock bottle, which appears to be of 1,000-count size from the shelves and handing it to Horton, who then went to a counter and proceeded to fill an amber prescription bottle with some of the contents of the 1,000-count bottle. *Id.* The evidence further shows Horton then placing items in a blue tote, after which he proceeded to the pharmacy’s shelves, took a stock bottle off a shelf, and showed it to Chris Watson before placing it in a pharmacy bag. *Id.* Thereafter, the evidence shows Horton going into a back room with the pharmacy bag, before returning and then placing the pharmacy bag in the tote. *Id.*

C. Horton then went back to another shelf, and returned with another stock bottle which he showed to Chris Watson. *Id.* Horton then took out an amber prescription bottle before disappearing from the camera frame; however, upon reappearing, Horton did not have the stock bottle but appeared

fake documents and supplying them to law enforcement to cover his tracks in supplying Samantha Pemberton with drugs . . . stand[s] out as worthy of separate consideration under Factor 5.” R.D. at 58. At no point did the Government argue that Watson’s actions with respect to the creation and provision of these documents to the local police constitute actionable misconduct under factor five, and while Respondent stipulated to the testimony, I conclude that the issue was “‘incidental” to the principal issues in the case. *See, e.g., Yellow Freight System, Inc. v. Martin*, 954 F.2d 353, 358 (6th Cir. 1992) (An “agency may not base its decision upon an issue the parties tried inadvertently. Implied consent is not established merely because one party introduced evidence relevant to an unpleaded issue and the opposing party failed to object to its introduction. It must appear that the parties understood the evidence to be aimed at the unpleaded issue. Also, evidence introduced at a hearing that is relevant to a pleaded issue as well as an unpleaded issue cannot serve to give the opposing party fair notice that the new, unpleaded issue is entering the case.”) (citations omitted); *see also NLRB v. Majestic Weaving Co.*, 355 F.2d 854, 861–62 (2d Cir. 1966) (where Government’s case focuses on other issues and evidence of uncharged violations is “at most incidental,” the incidental issue cannot support a sanction); 5 U.S.C. 554(b) (“Persons entitled to notice of an agency hearing shall be timely informed of . . . the matters of fact and law asserted.”) (emphasis added).

to place something in his jacket pocket. *Id.* Horton then took the tote and left the pharmacy. *Id.*

D. About ten minutes later, Horton returned to the pharmacy without the blue tote. *Id.* A short while later, Chris Watson pulled a stock bottle from a shelf and placed it on the counter, after which Horton walked to the counter, counted pills, removed several amber pill bottles from under the counter and proceeded to fill them. *Id.* After handing a bottle to Watson, Horton placed one of the bottles in his pocket. *Id.* Horton then obtained a pharmacy bag and placed multiple amber bottles into the bag before leaving the pharmacy. *Id.* The video then shows Horton carrying a blue tote and leaving the store, followed by his placing the tote in the bed of his pick-up truck, before driving away.

E. Later that evening, Horton was arrested by an Arkansas State Trooper on an outstanding warrant following a traffic stop. During an inventory search of Horton’s vehicle, the officer found the blue tote along with one 1,000-count bottle of hydrocodone 10/325 mg, two 100-count bottles of methadone 10 mg, and one 100-count bottle of oxycodone 30. Tr. 83; Stipulation 21; GX 36, at 12. Notably, the oxycodone 30 bottle also had Respondent’s stock sticker on it. GX 36, at 12.

F. In addition to the above, Respondent stipulated to Ms. Pemberton’s testimony that on two occasions she “‘witnessed [Chris Watson] providing stock bottles of controlled substances to Eric Horton” while attending parties at Watson’s home. ALJ Ex. 20, at 9.

I therefore conclude that the evidence shows that on multiple occasions, Chris Watson (and Respondent) unlawfully distributed controlled substances to include hydrocodone, methadone, and oxycodone to Eric Horton.⁸ *See* 21 U.S.C. 841(a)(1).

(4) The evidence also shows that on or about September 14, 2014, the Arkansas State Police arrested one Joseph Jackson who had been involved in a motor vehicle accident. Tr. 68–70. According to the unrefuted testimony, local police officers observed a bottle of prescription liquid codeine (with the label scratched off) in the front seat of Jackson’s vehicle and the State Trooper testified that Jackson smelled of marijuana. Tr. 70–71. During a search of

⁸ The State Trooper further testified that he found pills in bottles that were mislabeled, as well as pills that were mixed in bottles. Tr. 83. He also found a coke bottle with a lid that could be unscrewed to access a container; inside the container was “a bunch of mixed pills.” *Id.* He also found other coke cans with lids that could be unscrewed and used to hide drugs. *Id.* at 84.

the vehicle, the Officer found a black bag which contained “a baggie of marijuana, prescription bottles of drugs, and two handguns,” as well as a 500-count bottle of alprazolam 2 mg which bore Respondent’s stock sticker. Tr. 71; Stipulation 22; ALJ Ex. 15, at 16.

Because the evidence further shows that Respondent had not filed a controlled substance theft or loss report with DEA “since at least 2012,” I conclude that Respondent unlawfully distributed the 500-count bottle of alprazolam 2 mg. Stipulation 23; *see* 21 U.S.C. 841(a)(1).

(5) Other evidence establishes that Chris Watson removed stock bottles of controlled substances from Respondent. Specifically, one of Respondent’s employees provided stipulated testimony that she had seen Chris Watson remove stock bottles of hydrocodone and Xanax (alprazolam) from Respondent. ALJ Ex. 20, at 20–21. Still another employee testified that on two occasions he witnessed Chris Watson take 1,000 count bottles of hydrocodone off the shelf and place them in his backpack. Tr. 278–79.

(6) The evidence further shows that on four occasions beginning on November 7, 2014 and ending on December 4, 2014, a DEA Special Agent (S/A) made undercover visits to Respondent during which he presented fictitious controlled substance prescriptions to Chris Watson. ALJ Ex. 15, at 5.

A. On the first occasion, the S/A presented prescriptions for 120 Norco (hydrocodone/acetaminophen) 10/325 mg and 60 Xanax (alprazolam) 2 mg.⁹ at 5–6. According to the S/A, he asked Chris Watson if he “create[d] the script right?”; Watson then told the S/A to add a certain letter to the DEA number he had created and to change the last number of the prescription “to create a more realistic-looking prescription.” *Id.* at 6. Notwithstanding that Watson knew the two prescriptions were fraudulent, he filled them. *Id.*; *see also* GXs 6, 7, 8.

B. On November 13, 2014, the S/A returned to Respondent and presented prescriptions for both hydrocodone and alprazolam to Chris Watson. ALJ Ex. 15, at 6. However, Watson told the S/A that he was out of both drugs but would have more the next week. *Id.* The S/A then asked Watson if the letters he had used on the prescriptions for the prescriber’s DEA registration number (RF) “were correct?” *Id.* Watson told him to use “RA” instead and wrote the letters down on a piece of paper. *Id.* After the S/A looked at the paper,

Watson “scratched out the letters with a pen.” *Id.*

C. On November 19, 2014, the S/A returned to Respondent with prescriptions for 240 Norco 10/325 mg (hydrocodone/apap) and 60 Xanax 2 mg which he presented to Watson. *Id.*; *see also* GX 15, at 1. However, Watson stated that he could not fill the Norco prescription because he had run out “two days earlier” and “would not get any more tablets until the first of the month.” *Id.* The S/A then asked Watson if the DEA number on the prescription “was correct.” *Id.* at 7. Watson told him to change the last digit on the number and then “described how to formulate a DEA number.” *Id.* Watson then told the S/A that “the prescription . . . looked better than most he sees at the pharmacy.” *Id.*

The S/A then asked Watson how much it would cost to buy a 1,000-count bottle of hydrocodone; Watson stated: “I don’t usually do that.” *Id.* After the S/A told Watson that he was trying to make some extra money, Watson replied that what the S/A did with the pills after the prescriptions had been filled [was] “none of his business.” *Id.* Watson then told the S/A to return to Respondent on the first of the month when the pharmacy would be resupplied with hydrocodone. *Id.* However, there is no evidence that Watson filled the Xanax prescription on this date.

D. On December 4, 2014, the S/A presented fictitious prescriptions for 240 tablets of hydrocodone 10/325 mg and 60 tablets of alprazolam 2 mg to Chris Watson. ALJ EX. 15, at 7. Watson dispensed the prescriptions to the S/A. *Id.*; *see also* GX 29–30.

E. The evidence thus shows that Watson knowingly distributed both hydrocodone/acetaminophen (a schedule II narcotic) and alprazolam (a schedule IV benzodiazepine) on two occasions, based on fraudulent prescriptions, for a total of four separate acts of unlawful distribution. *See* 21 U.S.C. 841(a)(1); *see also id.* § 843(a)(2) (“It shall be unlawful for any person knowingly or intentionally . . . to use in the course of the . . . distribution [] or dispensing of a controlled substance . . . a registration number which is fictitious[.]”); *Cf.* 21 CFR 1306.04(a) (“An order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of section 309 (21 U.S.C. 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the

provisions of law relating to controlled substances.”).

Moreover, I agree with the Government and CALJ that Watson’s actions in instructing the S/A, who, in his undercover capacity presented as a drug-seeking patient, as to how to create fraudulent prescriptions which were “more realistic,” constitutes conduct “inconsistent with the public interest,” regardless of whether it is considered under factor two (experience in dispensing controlled substances) or factor five (“[s]uch other conduct which may threaten the public health and safety”). 21 U.S.C. 823(f).¹⁰

(7)A. Other evidence shows that during a search of Chris Watson’s home, paper controlled substance prescriptions for both schedule II drugs OxyContin (oxycodone) and combination hydrocodone (with acetaminophen), and schedule IV drugs, including alprazolam, clonazepam, and Soma (carisoprodol), were found in violation of DEA regulations. ALJ EX. 15, at 2. More specifically, DEA regulations require that paper prescriptions be maintained at the registered location. *See* 21 CFR 1304.04(h)(2) (“Paper prescriptions for Schedule II controlled substances shall be maintained at the registered location in a separate prescription file.”); *id.* § 1304.04(h)(4) (“Paper prescriptions for Schedules III, IV, and V controlled substances shall be maintained at the registered location either in a separate prescription file for Schedules III, IV, and V controlled substances only or in such form that they are readily retrievable from the other prescription records of the pharmacy.”).

B. Still other evidence shows that during the execution of a search warrant at Respondent, the pharmacy only had

¹⁰ As found above, Chris Watson clearly knew that the S/A was presenting fraudulent prescriptions when he filled them. In other circumstances, a pharmacist’s counseling of a person who he knows to be presenting a fraudulent prescription as to how to create “more realistic” prescriptions (*i.e.*, one which would avoid detection by another pharmacist to whom it was presented) could constitute criminal conduct actionable under factor four even without a conviction. *See* 21 U.S.C. 843(a)(3) (“It shall be unlawful for any person knowingly or intentionally . . . to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge[.]”); 18 U.S.C. 2(a) (“Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.”). So too, in other circumstances (*i.e.*, where the person creating the prescriptions is not an agent for the Government), Watson’s conduct in filling a prescription, which he knew bore a fictitious registration number, could support a charge of conspiracy to use a fictitious registration number in the course of the distribution or dispensing of a controlled substance. *See* 21 U.S.C. 846; *id.* § 843(a)(2).

⁹ Both prescriptions were written on a single form. GX 6.

“partial invoices” for the controlled substances it purchased in December 2014 and January 2015 because Eric Horton “had removed all of the other invoices at PIC Watson’s request in early December 2014.” ALJ Ex. 20, at 22. However, under 21 U.S.C. 827(a)(3), “every registrant . . . distributing[] or dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance received . . . by him.” Moreover, under DEA regulations, these records “must be kept by the registrant and be available, for at least 2 years from the date of such inventory or records, for inspection and copying by authorized employees of” DEA and must be kept at the registered location unless “the registrant has notified the Administration of his intention to keep” the records “at a central location, rather than at the registered location.” 21 CFR 1304.04(a). Likewise, Respondent could not produce its most recent inventory, which apparently had been removed by its PIC notwithstanding that a DEA regulation requires that the inventory be maintained at the registered location. ALJ Ex. 20, at 23; *see also* 21 CFR 1304.04(b)(1) (requiring that inventories “be maintained at each registered location”).

(8) Finally, the evidence shows that Respondent would receive shipments of controlled substances such as oxycodone and that the drugs would “frequently disappear overnight.” ALJ Ex. 20, at 20–21. The evidence also shows that “in either August or October 2013, two 1,000-count bottles of carisoprodol were stolen” from Respondent. *Id.* at 22. Yet the evidence also shows that as of January 22, 2015, Respondent had not filed any theft or loss reports (DEA Form 106) with DEA since January 1, 2012.¹¹ ALJ Ex. 20, at 17; Tr. 175–76; GX 63.

While Respondent stipulated to most of these acts, this is not the only evidence of misconduct on the part of Respondent’s principals. More specifically, the evidence shows that on various occasions, Tom Watson, Respondent’s owner and the father of Chris Watson, was provided information by employees and a business partner that Chris Watson was likely diverting controlled substances and failed to take appropriate action.

Mr. Tracy Swaim testified that he had worked at Respondent for 26 years and

had served as its PIC from June 1997 until January 2012, when he resigned. Tr. 233, 251. Mr. Swaim further testified that after Chris Watson began working at Respondent as a staff pharmacist (in July 2011), he noticed that Chris Watson “was not being completely legal on some refills” and that he saw this over the course of a month. *Id.* at 251, 253, 263. Mr. Swaim decided that he was not going to remain as the PIC and told Tom Watson that he was not going to remain as the PIC because Chris was “bending the rules” and he (Mr. Swaim) did not “want to go to jail.” *Id.* at 253. Thereafter, Swaim then completed the drug inventory and Chris Watson became Respondent’s PIC. *Id.* at 254.

Mr. Swaim, who stayed on as a staff pharmacist with the same hours, further testified that in September 2014, a pharmacy technician (who had worked at Respondent for 31 years, *see* ALJ Ex. 20, at 21), “was having a conversation with Tom [Watson]” during which she told Watson that Chris Watson was “giving stuff away.” Tr. 256–57. Mr. Swaim joined the conversation and told Tom Watson, “Tom, he’s handing pills out the window,” and that he was going to give his notice if Watson did not stop Chris’s misconduct. *Id.* at 257. Tom Watson replied that he would “put a stop to it” and to “trust me.” *Id.* However, when Mr. Swaim returned to Respondent after several days off, he “asked the girls [the pharmacy techs] if Chris had changed” his behavior and was told “no.” *Id.* Mr. Swaim then gave notice and retired. *Id.*

Grant Goode, who was Tom Watson’s nephew, worked as a staff pharmacist at Respondent from December 12, 2014 through February 18, 2015.¹² Tr. 271; 273. Mr. Goode testified that he worked approximately 25 hours a week during December 2014, and that in January, he gradually increased his hours until after the middle of January, he was working most of the hours that the pharmacy was open. *Id.* at 271. Mr. Goode testified that when he was not working at Respondent, Chris Watson was the pharmacist. *Id.* at 273.

Mr. Goode testified that while working at Respondent, he received phone calls from a couple of doctors inquiring about whether their patients had picked up prescriptions written by them, and that after he would inform the doctors that the patients had picked up the prescriptions, the doctors would ask if their patients had filled any other prescriptions. Tr. 275. Goode testified that when he would tell the doctors about the other prescriptions listed in

the patients’ profiles, the doctors stated that they had not written “any prescriptions for those days.” *Id.* Goode further testified that there were “dozens” of instances in which he looked for the hard copies of controlled substance prescriptions which were listed on the patient profiles but was unable to find them. *Id.* at 274–75.

Mr. Goode testified that he told Tom Watson that he had “talked to a couple of doctors, and that [he] couldn’t find any hard copies for those prescriptions.” *Id.* at 276. According to Goode, Watson’s reaction was that the prescriptions may have been placed in the wrong file by the pharmacy technicians. *Id.* at 276–78. Mr. Goode further testified that he discovered that Respondent was missing prescriptions and reported this to Tom Watson during the first week of his employment (following December 12, 2014). *Id.* Goode testified that after the conversation he asked the pharmacy technicians about the prescriptions and was told that they “should be in the file.” *Id.* at 278.

Mr. Goode testified to another incident, during which Tom Watson was present at Respondent and “sitting at the desk” when Chris Watson took a 1,000-count bottle of hydrocodone off the pharmacy’s shelves and placed it in his backpack. *Id.* at 278–80. Mr. Goode testified that “[i]t appeared to” him that Tom Watson saw what Chris was doing. *Id.* at 280.

Mr. Goode testified to a further incident, which occurred on January 2, 2015. *Id.* at 282. According to Mr. Goode, one of Respondent’s pharmacy technicians brought to his attention “several” prescriptions for schedule II drugs that were “just made up” and which listed Goode as the dispensing pharmacist on the label. *Id.* at 282–83. Mr. Goode testified that Tom Watson was at Respondent that morning and so Mr. Goode laid out six or eight prescriptions and told Watson that while his initials were on the prescriptions he had not filled any of them. *Id.* Tom Watson responded that one of the pharmacy technicians (one who had worked for him for 31 years) “must be doing that.” *Id.* at 283. Goode then told Tom Watson that Chris “was logging in and printing prescriptions from his laptop.” *Id.* Goode further testified that Tom Watson did not take any action in response to the allegation.¹³ *Id.* at 284.

¹¹ While Respondent reported a theft incident in August 2013 which involved oxycodone, hydrocodone, alprazolam, clonazepam, and phenergan with codeine to the Arkansas Board of Pharmacy on a DEA Form 106, the report was never filed with DEA as required by 21 CFR 1301.74(c). Tr. 120.

¹² Grant Goode testified that he also worked at Respondent on November 24, 2014. Tr. 271.

¹³ In its closing brief, Respondent argues that in a proceeding brought to revoke Chris Watson’s bond, based on the unsuitability of his third-party custodian, a federal magistrate judge found that “Mr. [Grant] Goode lacks credibility when testifying
Continued

The Government also elicited testimony from Steve Goode, who, between 2001 and 2012, was a business partner of Tom Watson in four supermarkets (including Respondent), three of which had pharmacies. *Id.* at 485–86. While Steve Goode testified that his responsibilities involved managing the grocery side of the stores and that Tom and Chris Watson oversaw the pharmacies, he would see the daily and weekly sales reports for the stores. *Id.* at 487. Steve Goode further testified that its grocery wholesaler (AWG) allowed McKesson (the drug distributor used by the stores' pharmacies) to invoice through it, and thus, even though Steve Goode's responsibilities were limited to the grocery side of the stores, he could see the pharmacies' purchases on the "weekly AWG statement." *Id.* at 487–88. According to Steve Goode, the daily sales report showed the sales of both the grocery side and the pharmacies. *Id.*

in court under oath." Resp. Post-Hrng. Br. 8.; see also RX 14 (denying motion, reasoning that "[t]he evidence revealed a number of conflicting family dynamics casting considerable doubt upon the reliability of the witness describing the alleged behavior that the Government presented to disqualify the current third-party custodian"). Apparently, this was in response to Mr. Goode's testimony in the criminal proceeding against Chris Watson that Tom Watson said "he would like to kill a couple of DEA agents," a statement which he reported to DEA and which prompted the U.S. Attorney to file the motion. Tr. 302; see also RX 14.

The CALJ nonetheless found Grant Goode's testimony to be "sufficiently detailed, plausible, and internally consistent to be fully credited in this decision." R.D. 25. The CALJ further explained that "[b]ecause the Government did not offer the purported threat in its case-in-chief, a disposition of this case does not require that a credibility issue on this statement be rendered, and it forms no basis for this recommended decision." *Id.* at n.69.

Respondent, however, offered the magistrate judge's findings to attack Grant Goode's credibility with respect to his testimony that he had brought his concerns about Chris Watson to Tom Watson's attention and sought to have the CALJ give Goode's testimony "no weight." Resp. Post-Hrng. Br. 8 ("It is not known if the attention the DEA gave to Mr. Goode made him have delusions of grandeur that motivated his testimony, but he did take a keen interest in this case when he, unlike other lay witnesses, was at the hearing every day, even after his testimony had been given. On the other hand, unlike his reaction to Mr. Swaim's testimony, Tom Watson flatly denied that Mr. Goode ever brought any concerns about Chris to his attention." (citations omitted)).

However, while Respondent offered the magistrate judge's finding to impeach Mr. Goode's testimony, I nonetheless adopt the CALJ's credibility finding because in assessing the credibility of Mr. Goode's testimony, I am entitled to consider "the consistency and inherent probability of [his] testimony." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 496 (1951). Here, consistent with Mr. Goode's testimony, other witnesses testified that they brought their concerns with Chris Watson to Tom Watson's attention but that the latter ignored them. Accordingly, I find Goode's testimony credible notwithstanding the magistrate judge's finding.

Steve Goode further testified that in the summer of 2010, he noticed that one of the stores (Mayflower Food and Drug) "didn't have any money in [its] accounts." *Id.* at 490. Goode looked into the situation and determined that while the pharmacy's purchases of medications "were up," it "sales were flat." *Id.*; see also *id.* at 491. Of note, Chris Watson was the Pharmacist in Charge at the Mayflower store. *Id.* at 490.

Steve Goode told Tom Watson about the issue; Watson's response was that "we would get together and . . . have a talk with Chris." *Id.* at 491. However, when the conversation did occur, Goode was told that he "needed just to take care of the grocery department [and] that Chris would take care of the pharmacy department." *Id.* at 492–93.

At some point, Chris Watson started working at Respondent. *Id.* at 495. According to Steve Goode, in the "late spring of 2012" he was on vacation when he received a phone call from another employee who told him that Chris Watson had allowed a former employee from the Mayflower pharmacy to go into Respondent on a Sunday afternoon when the pharmacy was closed and fill prescriptions "for her family members and friends." *Id.* at 496, 498. When Goode returned from vacation, he spoke with Tom Watson about the incident and told him that he needed to "get a handle on Chris." *Id.* at 496. While Tom Watson said that he would "take care of it," Goode testified that "[n]othing happened." *Id.* However, Goode did not know whether the prescriptions were for controlled substances. *Id.* at 500.

Regarding Mr. Swaim's testimony as to the reason he resigned as Respondent's PIC, Tom Watson testified that "I remember some of what he talked about but I don't remember all of what he talked about." Tr. 326. Watson then added that he had talked to his son "about some things, too, so I was hoping . . . everything was in good shape." *Id.* Mr. Watson also denied having had a conversation with his long-standing pharmacy technician (as Mr. Swaim testified) that Chris was diverting drugs. *Id.* at 347.

However, Tom Watson later acknowledged that Mr. Swaim is "a good guy," who had been with him for "a long time," before attributing the disparity between Mr. Swaim's testimony and his recollection as being the result of "some health problems." *Id.* at 333. Watson then maintained that "some of the stuff he said I just didn't remember like the conversations that he said we had. That don't mean we didn't have them. It just means that I just don't

remember them." *Id.* at 333–34. As between the testimony of Mr. Swaim and Mr. Watson, the CALJ found Mr. Swaim's testimony more credible than Mr. Watson's. See R.D. 23, 41. I agree with the CALJ.

As for Grant Goode's testimony that he told Tom Watson about the issues he found (the missing hard copy prescriptions, the doctors denying having written various prescriptions, the dispensings which were attributed to him which he did not fill), Watson asserted that "I haven't talked to Grant about any concerns," that Grant "didn't mention a word about anything he talks about here," and "didn't mention misconduct . . . about anybody." *Id.* at 348–49.

Watson also faulted Grant Goode for having called the State Board and the DEA, testifying that: "Well, he seems like he's talked to everybody else. He's called the state board. He's called the DEA, and all this stuff, but he hasn't talked to me about it." *Id.* at 348.¹⁴ Still later, Watson reiterated that Grant Goode had "never come directly to" him about the issues he encountered. *Id.* at 351. While Watson maintained that Grant Goode also had the same medical issue which affected Watson's memory, Tr. 349, the CALJ found that "Watson's assertion that . . . Grant Goode never brought concerns about his son's actions to his attention is simply not credible." R.D. at 41. I agree with the CALJ.¹⁵

Mr. Watson further testified that he trusted his son, and that this "really" shocked him. Tr. 326. When then asked whether he had any idea that his son "had a substance abuse issue or was diverting," Watson maintained that he "had no idea [Chris] had any kind of drug problem." *Id.*

When further asked what he would have done if he "had known that [his] son had a substance abuse problem or was diverting controlled substances," Watson asserted that he would have "[g]ot it stopped," that he would have gone "to the state board," and that he

¹⁴ Later, Watson testified that:

[F]amily is family. You know, if you've got a problem go see them about it, and talk about the problem. You don't know you got a problem until you at least talk about it. And you know, don't start with the state board, don't start with the DEA and all that. Start by calling your uncle or whatever or tell your mom and have her talk to your uncle if that—you know.

Tr. 350.

¹⁵ As for the incidents related by Steve Goode, Tom Watson also denied that Steve Goode had ever complained about the performance of the Mayflower pharmacy when Chris Watson was working there. Tr. 374–75. Notwithstanding that there is an ongoing dispute over the proceeds from dissolution of their partnership, *id.* at 505, the CALJ found that Steve Goode's testimony was fully credible as do I. R.D. 44.

“would have halted that immediately.” *Id.* at 328. However, shortly thereafter, Watson admitted that he did not “know exactly how [he] would have handled it,” but that “at some point” the state board would have had to “become involved” because he had scheduled an inventory for early February and “would have found out” that drugs were missing.¹⁶ *Id.* at 330. The CALJ did not find Mr. Watson’s testimony on these issues credible. R.D. at 41. Nor do I.

Thus, even putting aside the 2010 incident in which his business partner complained about the cash shortage at the Mayflower store, the evidence shows that on multiple occasions, Tom Watson, Respondent’s owner, was provided with information that Chris Watson was likely engaged in the diversion of controlled substances. Notably, in his testimony, Tom Watson claimed only that he talked to his son (although it is unclear which incident prompted this) and offered no testimony that he took any other measures (other than to schedule an inventory long after he had received credible reports of a problem) to investigate the allegations. This is especially remarkable in light of the complaints raised by Mr. Swaim and the pharmacy technician, both of whom had worked for Mr. Watson for decades. I therefore hold that Mr. Watson’s failure to investigate the allegations that his son and PIC was diverting controlled substances constitutes “other conduct which may threaten public health and safety.” 21 U.S.C. 823(f)(5); *see also Rose Mary Jacinta Lewis*, 72 FR 4035, 4042 (2007) (holding physician liable under factor five for failing to investigate the misuse of her registration; “every registrant has a duty to conduct a reasonable investigation upon receiving credible information to suspect a theft or diversion has occurred” as an investigation “is essential to preventing the continuation of criminal activity”).

The record in this matter thus establishes that Chris Watson, Respondent’s PIC, committed egregious and extensive misconduct which ranged from regulatory violations to criminal acts. In short, Chris Watson used Respondent’s DEA registration as a

license to engage in drug dealing. Notably, in its post-hearing brief, Respondent does not dispute the evidence of its PIC’s misconduct. Resp. Post-Hrng. Br. 2.

Thus, Respondent acknowledges that “the Government has met its burden of proving its Section 824(a) claim, placing the burden on [Respondent] to show that despite Chris Watson’s conduct, granting [it] a [Registration] would not be contrary to the public interest.” *Id.* at 3. I agree and hold that the evidence conclusively establishes that Respondent, through both its PIC and owner, has committed numerous acts “inconsistent with the public interest,” which support both the prior Administrator’s issuance of the Immediate Suspension Order, as well as the denial of Respondent’s pending application.¹⁷ *See* U.S.C. 823(f); 824(a)(4); 824(d).

¹⁷ The CALJ found that “[t]he most recent renewal of the Respondent’s registration occurred on February 7, 2012, with a scheduled expiration date of March 31, 2015.” R.D. at 2 n.2. The CALJ then explained that “[d]uring a March 19, 2015 status conference, the Respondent, through counsel, represented that a renewal application had been timely filed, and the Government represented that it will not contest the timeliness of the renewal application. Thus, the Respondent’s [Registration] remains in full force and effect.” *Id.* (citing 21 CFR 1301.36(i)).

Here, however, the prior Administrator ordered that Respondent’s registration be immediately suspended, thus prohibiting Respondent from exercising the authority granted by its registration. Thus, Respondent’s registration did not “remain[] in full force and effect.”

Moreover, according to the Agency’s registration records, of which I take official notice, Respondent did not file its renewal application until March 3, 2015. *See* 5 U.S.C. 556(e); 21 CFR 1316.59(e). Significantly, at the time Respondent filed its renewal application, it had previously been served with the Order to Show Cause and Immediate Suspension of Registration. By regulation, DEA has set forth the conditions for the continuation of a registration past its expiration date where a registrant has been served with an Order Show Cause. *See* 21 CFR 1301.36(i); *see also* 5 U.S.C. 558(c) (“When [a] licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.”). This regulation provides that:

[i]n the event that an applicant for reregistration (who is doing business under a registration previously granted and not revoked or suspended) has applied for reregistration at least 45 days before the date on which the existing registration is due to expire, and the Administrator has issued no order on the application on the date on which the existing registration is due to expire, the existing registration of the applicant shall automatically be extended and continue in effect until the date on which the Administrator so issues his/her order. The Administrator may extend any other existing registration under the circumstances contemplated in this section even though the Applicant failed to apply for reregistration at least 45 days before expiration of the existing registration, with or without request by the Applicant, if the Administrator finds that such extension is not inconsistent with the public health and safety.

Notwithstanding its egregious and extensive misconduct, Respondent nonetheless argues that the denial of its renewal application “on this ground is a matter of discretion.” Resp. Post-Hearing Br. 2 (citing *Dinorah Drug Store, Inc.*, 61 FR 15972, 15973 (1996)). As a statement of the law, that is true. However, as set forth in numerous decisions, where, as here, “the Government has proved that a registrant [or applicant] has committed acts inconsistent with the public interest, a registrant [or applicant] must ‘present sufficient mitigating evidence to assure the Administrator that it can be entrusted with the responsibility carried by such a registration.’” *Medicine Shoppe-Jonesborough*, 73 FR 364, 387 (2008) (quoting *Samuel S. Jackson*, 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller*, 53 FR 21931, 21932 (1988))). “Moreover, because ‘past performance is the best predictor of future performance,’ *ALRA Labs, Inc. v. DEA*, 54 F.3d 450, 452 (7th Cir. 1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for its actions and demonstrate that it will not engage in future misconduct.” *Medicine Shoppe*, 73 FR at 387; *see also Jackson*, 72 FR at 23853; *John H. Kennedy*, 71 FR 35705, 35709 (2006);

Id.

Thus, where a Registrant, which has been served with an Order to Show Cause, fails to file its renewal application at least 45 days before the expiration of its registration, the registration expires absent a showing that the extension of its registration is not inconsistent with the public health and safety. *See Ralph J. Chambers*, 79 FR 4962, 4962 (2014). The Agency has also applied the 45 day rule in cases where a registrant has been issued an Immediate Suspension Order, recognizing that while a timely renewal application may result in the extension of a registration, the Immediate Suspension Order precludes the registration from remaining in effect. *See Paul H. Volkman*, 73 FR 30630, 30641 (2008). However, the Agency has further held that where an untimely renewal application has been filed and the Registrant’s Registration has expired, the application remains pending before the Agency. *Id.*

In this matter, I am not bound by the Government’s agreement not to contest the timeliness of Respondent’s renewal application. Accordingly, I find that Respondent did not file its renewal application until 28 days before its registration expired and was thus untimely. Moreover, I further find that because Respondent’s registration was immediately suspended based on the prior Administrator’s finding, which is amply supported by the record, that its “continued registration during the pendency of these proceedings would constitute an imminent danger to the public health or safety,” ALJ Ex. 1, at 5; and there is no evidence that the prior Administrator found that the extension of its registration would not be “inconsistent with the public health and safety,” 21 CFR 1301.36(i), its registration has expired. However, I also find that Respondent’s application is before the Agency. *See Volkman*, 73 FR at 30641.

¹⁶ While Mr. Watson testified that an inventory would have determined that Respondent was missing drugs, short of doing an audit in which Respondent’s receipts of controlled drugs were added to the results of a previous inventory and its dispensings (as well as disposals, thefts or losses) were subtracted, it is not likely that this would have uncovered the problem. In any event, given the evidence that Mr. Swaim and Ms. Gilbert, his longstanding pharmacy technician, (not to mention his former business partner), had told Mr. Watson about his son’s activities, I am left to wonder why the inventory was not scheduled months earlier.

Prince George Daniels, 60 FR 62884, 62887 (1995). See also *Hoxie v. DEA*, 419 F.3d at 483 (“admitting fault” is “properly consider[ed]” by DEA to be an “important factor[.]” in the public interest determination). So too, an applicant’s candor during the proceeding is an important consideration in the public interest determination. See *Hoxie*, 419 F.3d at 483.

While a registrant must accept responsibility and demonstrate that it will not engage in future misconduct in order to establish that its registration is consistent with the public interest, DEA has repeatedly held that these are not the only factors that are relevant in determining the appropriate sanction. See, e.g., *Joseph Gaudio*, 74 FR 10083, 10094 (2009); *Southwood Pharmaceuticals, Inc.*, 72 FR 36487, 36504 (2007). Obviously, the egregiousness and extent of a registrant’s misconduct are significant factors in determining the appropriate sanction. See *Jacobo Dreszer*, 76 FR 19386, 19387–88 (2011) (explaining that a respondent can “argue that even though the Government has made out a *prima facie* case, his conduct was not so egregious as to warrant revocation”); *Volkman*, 73 FR at 30644; see also *Paul Weir Battershell*, 76 FR 44359, 44369 (2010) (imposing six-month suspension, noting that the evidence was not limited to security and recordkeeping violations found at first inspection and “manifested a disturbing pattern of indifference on the part of [r]espondent to his obligations as a registrant”); *Gregory D. Owens*, 74 FR 36751, 36757 n.22 (2009). So too, the Agency can consider the need to deter similar acts, both with respect to the respondent in a particular case and the community of registrants. See *Gaudio*, 74 FR at 10095 (quoting *Southwood*, 72 FR at 36504). Cf. *McCarthy v. SEC*, 406 F.3d 179, 188–89 (2d Cir. 2005) (upholding SEC’s express adoptions of “deterrence, both specific and general, as a component in analyzing the remedial efficacy of sanctions”).

Having considered the relevant factors, I conclude that Respondent has not produced sufficient evidence to show why it can be entrusted with a new registration. As for whether Respondent accepted responsibility for its misconduct, based on the record as a whole, I agree with the CALJ’s finding that it “has not accepted responsibility.” R.D. at 60.

I acknowledge that Respondent stipulated to many of the allegations. However, on the whole, Tom Watson’s testimony on the issue was equivocal and unpersuasive as he repeatedly

denied that he and Respondent were responsible for his son’s misconduct.

For example, Tom Watson initially testified that “I didn’t do enough. That was the problem.” Tr. 335. However, Watson then amended his testimony, stating: “Well, not that I didn’t do enough, I didn’t do it fast enough. I would have found out in a week what was—you know, where we stood on everything, so within a week I would have had to have made a decision on where I went from there because I would have known . . . exactly what we were missing.” *Id.* However, even crediting Watson’s testimony that he had scheduled an inventory to be conducted in early February (one week after the ISO was served), the evidence shows that Watson was told of his son’s misconduct on multiple occasions by three different persons (Mr. Swaim, Ms. Gilbert, his longstanding pharmacy tech, and his former business partner), well before his nephew Grant Goode also complained. Watson offered no explanation for why he failed to do anything more than talk to his son in response to the earlier reports he received.¹⁸

The record contains other examples of Tom Watson providing equivocal testimony or outright denying responsibility for Respondent’s various violations of federal law. For example, when asked whether he accepted responsibility for the violations Respondent committed when Chris Watson removed the controlled substance prescriptions from the pharmacy to his house, Tom Watson testified that Chris “failed to provided [sic] with the law,” before adding that while “[t]he owner have [sic] to take some responsibility . . . this is not—that’s not my fault, I don’t think. I think the pharmacist-in-charge should be responsible for that.” Tr. 354.

When then asked whether he was admitting that Respondent failed to comply with federal law when Chris Watson distributed controlled substance without a prescription, Tom Watson replied: “I don’t think [Respondent] did. I think my son did.” *Id.* at 355. Upon further questioning as to whether he was accepting responsibility for these violations, Watson explained: “I accept some responsibility because I probably should have replaced Chris with somebody else, but . . . it’s past tense so now so I can’t, so I’ll have to take responsibility for that, yes.” *Id.*

¹⁸ Even then, short of conducting an audit (of which an inventory is only a part), it is unlikely that Tom Watson would have discovered the full scope of Respondent’s diversion.

Turning to the multiple instances in which the undercover Agent presented clearly fraudulent prescriptions which Chris Watson filled, Tom Watson testified that he did not accept responsibility. *Id.* at 356. Watson then explained that “[w]hoever filled is responsible for those prescriptions. I didn’t fill them.” *Id.*

Tom Watson acknowledged that his son violated federal law when he distributed the stock bottles of controlled substances that were found on Eric Horton and Joseph Jackson when they were arrested. Tr. 357. However, when asked whether he bore any responsibility for these acts, Watson testified: “I don’t think so.” *Id.* at 358. Continuing, Watson added: “Whoever filled the prescriptions and whoever give [sic] the medication away, that’s who is responsible, I think. They will have to take responsibility for that they do, I mean it’s part of life.” *Id.*

Also, as found above, Mr. Watson’s nephew testified that Tom Watson was present on one occasion during which Chris Watson placed a 1,000-count bottle of hydrocodone in his back pack and that Tom Watson observed this. Tom Watson did not address this incident either to deny that it had occurred or to acknowledge that it had occurred and accept responsibility for his misconduct in failing to intervene to prevent his son from diverting the drugs.

Still later, when asked whether under Respondent’s new Policies and Procedures, Tom Watson could even be affiliated with Respondent, Watson testified that “[i]t would right now, yes. The only problem is I have done nothing wrong.” Tr. 368. Continuing, Watson explained that “[w]hen they come and took my DEA license, yes, that’s a possibility, but I have—I mean, I have done nothing wrong. I mean, I can’t help what other people have done, but me personally I have done nothing wrong . . . I might be a little slow to act on some things that’s all I’m guilty of.” Tr. 368.

Accordingly, I agree with the CALJ’s findings that Respondent has failed to accept responsibility for its misconduct. This alone is sufficient to conclude that Respondent has not rebutted the Government’s *prima facie* showing that granting Respondent’s application “would be inconsistent with the public interest.” 21 U.S.C. 823(f); see also *Liddy’s Pharmacy, L.L.C.*, 76 FR 48887, 48897 (2011). Given the egregiousness and extent of its misconduct, I need not consider whether Respondent has put forward sufficient evidence of remedial

measures to support its burden of production on this issue.¹⁹

Respondent nonetheless argues that it should be granted a new registration because “[t]he community impact” of not granting its application “is

¹⁹On the issue of its remedial measures, Respondent argued that Tom Watson testified that if its application is granted, “he will be more actively involved in its operations” to “ensure its proper operations, accountability, and viability.” Resp. Post-Hrng. Br. 16. However, given the multiple instances in which Mr. Watson was made aware of his son’s misconduct and did nothing more than talk to his son, his promise to do better in the future rings hollow.

On this issue, Respondent also presented the testimony of Glenn Wood, its prospective new Pharmacist in Charge. R.D. at 60. Finding Wood’s testimony unpersuasive, the CALJ explained that:

Wood’s testimony concerning all the extra security measure [sic] he intends to take suffers from the same fundamental defect that [Tom] Watson’s representations regarding his anticipated increased pharmacy involvement and implementation of his Proposed Policy do: both men were present and did nothing when the Respondent’s PIC Chris [Watson], ran wild. These men are a major part of the problem, not the champions of a solution that can be afforded any genuine credence.

Id.

I do not find adequate support in the record for the CALJ’s assertion that Glenn Wood was “present and did nothing when” Chris Watson “ran wild.” While Glenn Wood testified that he had done a one-month internship under Chris Watson while he was in pharmacy school, Tr. 477, 479; and that during the period 2006 through 2007, when he was working at both the Mayflower and Perryville stores, he worked alongside of Chris Watson one day a week, *id.* 454, 479; there is no evidence that Chris Watson was diverting controlled substances during this time period, let alone evidence that Glenn Wood observed this.

Thereafter, Wood went to Utah for a brief period before returning to Arkansas and becoming the PIC at Morrilton Food and Drug for approximately three years up until the sale of the pharmacy in 2013. Tr. 395–96. Here again, there is no evidence that Chris Watson was diverting drugs in this period, let alone evidence that Glenn Wood observed this.

After the sale of Morrilton Food and Drug, Wood worked for a pharmacy that is not affiliated with the Watsons, before agreeing in December 2014 with Chris Watson to work several days a week at Respondent. *Id.* at 396. Wood, however, did not start work at Respondent until January 28, 2015, the day after the search warrant and Immediate Suspension Order were served. *Id.* at 398.

To be sure, Wood acknowledged that he had met Eric Horton at a birthday party for Chris Watson’s daughter and there were occasions on which Chris Watson and Horton would show up at the pharmacy. *Id.* at 464–68. This, however, is too thin a reed to support the conclusion that Wood was “present and did nothing when [Chris Watson] ran wild.” R.D. at 60, especially given that there is no evidence that Watson was diverting drugs during this period. Ultimately, because Wood testified primarily on the issue of whether Respondent has instituted adequate remedial measures, an issue which I need not resolve given Respondent’s failure to accept responsibility, I deem it unnecessary to consider the issues surrounding the February 25, 2015 phone call (nearly one month after the ISO was served and the search warrant executed) between Wood and Grant Goode regarding the latter’s employment status, or Wood’s involvement in the Redneck Remedy business venture, and decline to adopt that portion of the Recommended Decision which discusses these issues. R.D. 29–36.

significant.” Resp. Post-Hrng. Br. 12. As support for its contention, it relies on *Pettigrew Rexall Drugs*, 64 FR 8855, 8860 (1999), a case in which the Agency found that revocation of a pharmacy’s registration was justified by the proven misconduct (*i.e.*, dispensing controlled substances without a physician’s authorization but for which the patients appeared to have medical needs), but then “recognize[d] that [it was] one of two pharmacies in a relatively poor, medically underserved community, and . . . would most likely close if its DEA registration [was] revoked.” However, the Agency also noted that in addition to having changed its procedures, there was “no evidence of any wrongdoing since the events at issue” which had occurred five or more years before the proceeding was even initiated (and eight years before the issuance of the decision). *Id.*

Based on *Pettigrew Rexall Drugs*, Respondent argues that the community impact would be substantial because Respondent “is located in “a rural and underserved area,” and that “[a] large percentage of [its] patients are indigent.” Resp. Post-Hrng. Br. 13–14. Respondent further argues that without a registration, Respondent would not be viable concern because patients will not go to two different pharmacies to fill their prescriptions and that the only “other pharmacy in the area” “would have a monopoly.” *Id.* at 14–15.

While the Agency has now in multiple cases rejected the contention that community impact is a relevant consideration in assessing whether a *prescribing* practitioner’s registration “would be consistent with the public interest,” and the reasoning of these decisions calls into question the continuing vitality of *Pettigrew Rexall Drugs* even as applied to a pharmacy, contrary to the discussion in the Recommended Decision, R.D. at 60, the Agency has not formally overruled the case.²⁰ However, the Agency’s reasons

²⁰Each of the cases cited by the ALJ involved prescribers. The closest the Agency has come to overruling *Pettigrew Rexall Drugs* is *Physicians Pharmacy, L.L.C.*, 77 FR 47096 (2012). Therein, the Agency agreed “with the ALJ’s rejection of the Government’s contention that ‘in assessing the public interest, the nature and amount of diversion of controlled substances in a geographical area is a legitimate area of inquiry and concern when determining whether an applicant should be granted a DEA registration.’” *Id.* at 47096 n.2. As the Agency explained, “[n]othing in the texts of any of the five [public interest] factors set forth in section 823(f) remotely suggests that Congress granted the Agency authority to deny an application based on its assessment of ‘the nature and amount of diversion of controlled substances in a geographical area.’” *Id.* (quoting Gov. Br. 4).

In dicta, the Agency also noted that the Government’s argument is “simply the other side of

for rejecting consideration of community impact evidence in cases involving prescribing practitioners apply with equal force to pharmacies.

In *Gregory Owens*, 74 FR 36751, 36757 (2009), the Agency explained that “whether a practitioner treats patients who come from a medically underserved community or who have limited incomes has no bearing on whether he has accepted responsibility and undertaken adequate corrective measures.” The Agency further explained that “[t]he diversion of prescription drugs has become an increasingly serious societal problem, which is particularly significant in poorer communities whether they are located in rural or urban areas,” and that “[t]he residents of this Nation’s poorer areas are as deserving of protection from diverters as are the citizens of its wealthier communities.” *Id.*

The Agency also noted that there are no workable standards for determining when a practitioner should be entitled to a reduced sanction based on community impact evidence. *Id.* Thus, in *Owens*, the Agency rejected the ALJ’s recommendation that the Agency should decline to impose either a suspension or revocation of the practitioner’s registration because 10 percent of his patients came from underserved counties and a majority of his patients had limited finances.

As the Agency explained:

The ALJ’s reasoning begs the question of how many patients from underserved areas would a practitioner have to treat to claim the benefit of the rule. As for her reliance on the fact that a majority of Respondent’s patients have limited incomes, determining what constitutes a patient with a limited income or finances (or what percentage of patients) a practitioner must have [who meet the criteria] to claim entitlement to this rule,

the community impact coin” and “that a rule which takes into account the impact on the community caused by not registering (or de-registering through a revocation proceeding) a particular practitioner is completely unworkable.” *Id.* (citations omitted). Moreover, the Agency cited only cases involving prescribing practitioners and did not discuss *Pettigrew Rexall Drugs*. Accordingly, *Physicians Pharmacy* cannot be read as overruling *Pettigrew Rexall Drugs*. See, e.g., *Drug Plastics & Glass Co., Inc.*, v. NLRB, 44 F.3d 1017, 1022 (D.C. Cir. 1995) (“In order to diverge from agency precedent, the Board must ‘suppl[y] a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.’”) (citations omitted); *Shaw’s Supermarkets, Inc.*, v. NLRB, 884 F.2d 34, 37 (1st Cir. 1989) (quoting *Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 808–09 (1973) (plurality op.) (“It is, of course, true that the Board is free to adopt new rules of decision and that the new rules of law can be given retroactive application. Nevertheless the Board may not depart sub silentio, from its usual rules of decision to reach a different, unexplained result in a single case.”)).

would inject a new level of complexity into already complex proceedings and take the Agency far afield of the purpose of the CSA's registration provisions, which is to prevent diversion.

Id.

Notwithstanding that Respondent provided notice that it intended to argue that the Agency should consider the community impact of denying its application, the Government does not address whether *Pettigrew Rexall Drugs* remains viable as precedent. See generally Gov. Post-Hrng. Br. Accordingly, I address whether Respondent has produced sufficient evidence to support such a claim.

Respondent's evidence on the issue was limited to the testimony of Mr. Wood that Perry County is "an extremely rural area" and that "[a] large percent of our customers are what I would describe as being indigent probably somewhat." Tr. 404. Mr. Wood further testified that without Respondent, there would only be one pharmacy in the county which would have a monopoly. *Id.* at 405. Finally, Mr. Wood testified that in Arkansas, a pharmacist can provide disease state management and give immunizations. *Id.* at 404–05.

Mr. Wood's testimony is too insubstantial to support the conclusion that a sanction less than denial of its application is warranted because of the adverse community impact resulting from its inability to dispense controlled substances. Notably, Mr. Wood did not specify the percentage of Respondent's customers that is indigent, nor the income level he used to support his conclusion.

As for the contention that without a DEA registration, Respondent will lose many of its customers because they will not want to go to two pharmacies to fill their prescriptions, controlled substances constitute only 11 percent of all prescriptions issued nationally. See Electronic Prescriptions for Controlled Substances, 75 FR 16236, 16237 (2010) (Interim Final Rule). This suggests that the majority of pharmacy patients do not even fill controlled substance prescriptions.

Moreover, even if the lack of a registration will eventually render Respondent financially unviable, I do not find persuasive its contention that this will have an adverse community impact. While Respondent maintains that this will result in the creation of a monopoly because there is only one other pharmacy in Perryville, Mr. Watson and his partner formerly owned a pharmacy in Morrilton, Arkansas, which is only fourteen miles from Perryville, and the results of a Mapquest

search for pharmacies in the Perryville area (of which I take official notice) show that there are six pharmacies located in Morrilton.²¹ Tr. 395. Moreover, since *Pettigrew Rexall Drugs*, there has been an increase in the availability of legitimate mail order pharmacies. Thus, I reject Respondent's suggestion that denying its application will allow the remaining pharmacy to engage in monopolistic pricing.

Of further note with respect to Mr. Wood's testimony that a large percentage of Respondent's customers are indigent (and presumably less able to travel to Morrilton), Respondent produced no evidence as to the number of patients it deems to be indigent who are not enrolled in the Arkansas Medicaid program. However, the Arkansas Medicaid program covers the cost of most prescription drugs. See Arkansas Dept. of Human Services, Arkansas Medicaid, ARKids First & You—Arkansas Medical Beneficiary Handbook 56 (Rev. 2010). And Respondent produced no evidence that the other Perryville pharmacy does not accept Medicaid patients.²² Finally, as for Respondent's contention that pharmacists in Arkansas can provide disease state management and immunizations, it has offered no evidence that there is a shortage of medical professionals in the Perryville area who can provide these services.²³

²¹ Pursuant to 5 U.S.C. 556(e), Respondent may show to the contrary, by filing a properly supported motion, no later than 15 days from the date of service of this order, which shall commence on the date of mailing.

²² Because Respondent seeks to rebut the Government's *prima facie* showing, it has the burden of production on this issue.

²³ While I decline to overrule *Pettigrew Rexall Drugs*, I find its reasoning to be problematic as it appears to have given more weight to community impact than was warranted by the minimal evidence discussed in the decision and set forth no principle for when such evidence could overcome other relevant factors.

For example, the decision noted the Agency's agreement with the ALJ's finding that the pharmacy owner "did not appear candid or forthright and his testimony appeared to be tailored to Respondent's defense in this proceeding." 64 FR at 8858. The decision also noted the "[r]espondent's failure to acknowledge or accept responsibility for any wrongdoing." *Id.* at 8860.

Notably, since *Pettigrew Rexall Drugs*, the Agency has made clear that where the Government has proved that a registrant/applicant has engaged in intentional or knowing diversion, the registrant/applicant must acknowledge its misconduct to rebut the conclusion that its registration is inconsistent with the public interest. See *Holiday CVS, L.L.C., d/b/a CVS/Pharmacy Nos. 219 and 5195*, 77 FR 62315, 62323 (2012) (revoking pharmacy registration notwithstanding that company had replaced each pharmacy PIC because company failed to acknowledge its misconduct); *Jayam Krishna-Iyer*, 74 FR 459, 463 (2009) (holding on remand that had physician not "acknowledged wrongdoing with respect to both her prescribing to the undercover operatives, as well as" other

Thus, I conclude that Respondent's evidentiary showing on community impact is insufficient to rebut the Government's *prima facie* showing that granting its application "would be inconsistent with the public interest." 21 U.S.C. 823(f). Nor do I consider its evidence sufficient to support a lesser sanction than what is warranted on the facts of this case.

In short, I agree with the CALJ that the misconduct engaged in by both Chris Watson (Respondent's PIC) and Tom Watson (its owner) was egregious. See R.D. at 61. And I further agree with the CALJ's conclusion that "a sanction that falls short of [denial] would undermine the Agency's legitimate interests in both specific and general deterrence." *Id.* Accordingly, I will affirm the Order of Immediate Suspension, as well as order the denial of Respondent's pending application to renew its registration.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) as well as 28 CFR 0.100(b), I order that the application of Perry County Food & Drug for a DEA Certificate of Registration as a retail pharmacy be, and it hereby is, denied. Pursuant to the authority vested in me by 21 U.S.C. 824(a)(4) & (d), as well as 28 CFR 0.100(b), I affirm the Order of Immediate Suspension of DEA Certificate of Registration AP2331851 issued to Perry County Food & Drug. Pursuant to the authority vested in me by 21 U.S.C. 824(f), I further order that all right, title, and interest in any controlled substances seized by the Government during the execution of the

misconduct, the Agency "would [have] again revoke[d] her registration"; see also *MacKay v. DEA*, 664 F.3d 808, 820 (10th Cir. 2011) ("The DEA may properly consider whether a physician admits fault in determining if the physician's registration should be revoked.") (citation omitted); *Chen v. DEA*, 533 F.3d 828, 837 (D.C. Cir. 2008) (upholding revocation order, noting in part that physician had not "accepted responsibility for his misconduct"); *Hoxie v. DEA*, 419 F.3d 477, 483 (6th Cir. 2005) (DEA properly considers a registrant's admission of fault in determining whether registration should be revoked).

Since *Pettigrew Rexall Drugs*, the Agency has also made clear that it "places great weight on a registrant's/applicant's candor, both during an investigation and in any subsequent proceeding." *Robert F. Hunt*, 75 FR 49995, 50004 (2010); see also *The Lawsons, Inc., t/a The Medicine Shoppe Pharmacy*, 72 FR 74334, 74338 (2007) (quoting *Hoxie*, 419 F.3d at 483) ("Candor during DEA investigations properly is considered by the DEA to be an important factor when assessing whether a . . . registration is consistent with the public interest."); *Rose Mary Jacinta Lewis*, 72 FR at 4042 (holding that lying under oath in proceeding to downplay responsibility supports conclusion that physician "cannot be entrusted with a registration").

Thus, were a case to come before me with similar facts to those of *Pettigrew Rexall Drugs*, I would deny its application and/or revoke its registration.

Order of Immediate Suspension issued to Perry County Food & Drug be, and it hereby is, vested in the United States. This Order is effective immediately.²⁴

Dated: October 29, 2015.

Chuck Rosenberg,

Acting Administrator.

Paul A. Dean, Esq., for the Government.

M. Darren O'Quinn, Esq., for the Respondent.

RECOMMENDED RULINGS, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION OF THE ADMINISTRATIVE LAW JUDGE

John J. Mulrooney, II, Chief Administrative Law Judge. On January 26, 2015, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO)²⁵ suspending the DEA Certificate of Registration (COR), number AP2331851,²⁶ of Perry County Food & Drug (Respondent), pursuant to 21 U.S.C. 824(d), on the grounds that the Respondent's continued registration constitutes an immediate danger to the public health and safety. The OSC/ISO also proposes to revoke the Respondent's COR pursuant to 21 U.S.C. 824(a)(4), deny any pending applications for renewal or modification of such registration, or deny any applications for additional DEA registration, on the grounds that the Respondent's continued registration is inconsistent with the public interest as that term is defined in 21 U.S.C. 823(f). On February 6, 2015, the Respondent, through counsel, filed a timely request for a hearing.²⁷ A hearing was conducted in this matter on March 31–April 1, 2015, in Little Rock, Arkansas.

The issue ultimately to be adjudicated by the Administrator, with the assistance of this recommended decision, is whether the record as a whole establishes by substantial evidence that the Respondent's

registration with the DEA should be revoked pursuant to 21 U.S.C. 824(a).

After carefully considering the testimony elicited at the hearing, the admitted exhibits, the arguments of counsel, and the record as a whole, I have set forth my recommended findings of fact and conclusions of law below.

The Allegations

In the OSC/ISO, the Government contends that several bases exist upon which the Agency should revoke the Respondent's COR. The Government alleges that revocation of the Respondent's COR is appropriate because the Respondent unlawfully distributed controlled substances in violation of 21 U.S.C. 841(a) and 21 U.S.C. 842(a). Specifically, the Government contends that from August 2014 through January 2015, the Respondent (1) "on several occasions . . . distributed and dispensed controlled substances to individuals either without a prescription, as required by 21 U.S.C. 829(a), (b) and 21 CFR 1306.11(a) and 1306.21(a), or pursuant to prescriptions that [the Respondent's] pharmacist knew or should have known had not been issued for a legitimate medical purpose in the usual course of the practitioner's professional practice" and (2) failed to "provide effective controls against theft and diversion of controlled substances."²⁸

In support of its allegations, the Government asserts that on several occasions, the Respondent's pharmacist-in-charge (PIC) Chris Watson (Chris W) (1) dispensed controlled substances (hydrocodone and alprazolam) without a prescription and (2) dispensed controlled substances (hydrocodone and alprazolam) pursuant to prescriptions that Chris W knew were fictitious or fraudulent.²⁹ Additionally, the Government alleges that Chris W advised an undercover DEA agent on how to modify a scrip by hand to "create a more realistic looking prescription" and deliberately ignored the agent's reference to intentional diversion of controlled substances filled at the Respondent.³⁰ The Government also asserts that state law enforcement discovered the Respondent's stock bottles of controlled substances in vehicles of non-pharmacy personnel, and that the Respondent failed to inform DEA of the loss or theft of controlled

substances as required by 21 CFR 1301.74(c).³¹

The Stipulations of Fact

The Government and the Respondent, through counsel, have entered into stipulations³² regarding the following matters:

(1) The Respondent pharmacy is registered with the DEA as a retail pharmacy in Schedules II–V under DEA COR AP2331851 at 112 Houston Avenue, P.O. Box 327, Perryville, Arkansas 72126.

(2) The scheduled expiration date of DEA COR AP2331851, which has been issued to the Respondent, and is the subject of these proceedings, is March 31, 2015.

(3) During the time period of August 15, 2014 through January 28, 2015, Chris W was the Vice-President and Controller of the Respondent pharmacy.

(4) During the time period of August 15, 2014 through January 28, 2015, Chris W was the pharmacist-in-charge (PIC) of the Respondent pharmacy.

(5) The only registered address for the Respondent pharmacy under DEA COR AP2331851 is: 112 Houston Avenue, P.O. Box 327, Perryville, Arkansas 72126.

(6) Patient D.J.³³ had a prescription for Xanax, a controlled substance,³⁴ filled at the Respondent pharmacy on September 17, 2013. The hard copy of this prescription was discovered at Chris W's residence during the execution of a federal search warrant on January 27, 2015.

(7) Patient J.I. had a prescription for Clonazepam, a controlled substance,³⁵ filled at the Respondent pharmacy on September 17, 2013. The hard copy of this prescription was discovered at Chris W's residence during the execution of a federal search warrant on January 27, 2015.

(8) Patient A.Q. had a prescription for Hydrocodone, a controlled substance,³⁶

³¹ *Id.* at 4.

³² The parties have also entered into stipulations of credible testimony regarding twenty-three witnesses. All stipulations of fact and testimony are set forth in ALJ Ex. 20.

³³ Consistent with the terms of the Protective Order issued in this matter (ALJ Ex. 15), initials have been substituted for patient name identifiers. Copies of each of the prescriptions found at Chris W's house were received into evidence. Gov't Exs. 41, 54–63; Tr. 204.

³⁴ Xanax (alprazolam) is a Schedule IV controlled substance. 21 CFR 1308.14 (2015); Office of Diversion Control, *Benzodiazepines*, Drug Enforcement Admin. (Jan. 2013), available at http://www.deadiversion.usdoj.gov/drug_chem_info/benzo.pdf.

³⁵ Clonazepam is a Schedule IV controlled substance. 21 CFR 1308.14.

³⁶ Hydrocodone is a Schedule II controlled substance. 21 CFR 1308.12 (2015).

²⁴ For the same reasons that led the former Administrator to conclude that an Immediate Suspension was warranted, I conclude that the public interest necessitates that this Order be effective immediately. See 21 CFR 1316.67.

²⁵ ALJ Ex. 1.

²⁶ Gov't Ex. 1. The Respondent was issued DEA COR AP2331851 prior to April 2, 1986. *Id.* at 1. The most recent renewal of the Respondent's registration occurred on February 7, 2012, with a scheduled expiration date of March 31, 2015. *Id.* During a March 19, 2015 status conference, the Respondent, through counsel, represented that a renewal application had been timely filed, and the Government represented that it will not contest the timeliness of the renewal application. Thus, the Respondent's COR remains in full force and effect. 21 CFR 1301.36(i) (2015).

²⁷ ALJ Ex. 3.

²⁸ ALJ Ex. 1 at 1–3.

²⁹ *Id.* at 1–2.

³⁰ *Id.* at 2–3.

filled at the Respondent pharmacy on September 17, 2013. The hard copy of this prescription was discovered at Chris W's residence during the execution of a federal search warrant on January 27, 2015.

(9) Patient N.R. had a prescription for Hydrocodone, a controlled substance, filled at the Respondent pharmacy on May 25, 2011. The hard copy of this prescription was discovered at Chris W's residence during the execution of a federal search warrant on January 27, 2015.

(10) Patient M.B. had a prescription for Oxycontin, a controlled substance,³⁷ filled at the Respondent pharmacy on September 17, 2013. The hard copy of this prescription was discovered at Chris W's residence during the execution of a federal search warrant on January 27, 2015.

(11) Patient DC had a prescription for Soma, a controlled substance,³⁸ filled at the Respondent pharmacy on September 16, 2013. The hard copy of this prescription was discovered at Chris W's residence during the execution of a federal search warrant on January 27, 2015.

(12) Patient D.C. had a prescription for Hydrocodone, a controlled substance, filled at the Respondent pharmacy on September 16, 2013. The hard copy of this prescription was discovered at Chris W's residence during the execution of a federal search warrant on January 27, 2015.

(13) On or about August 15, 2014, Chris W dispensed 42 tablets of hydrocodone 10/325 mg to one A.R. without a prescription.

(14) On November 7, 2014, Chris W dispensed 120 tablets of hydrocodone 10/325 mg and 60 tablets of alprazolam 2 mg to an undercover DEA Special Agent pursuant to a prescription that Chris W knew or should have known was fraudulent.

(15) On November 7, 2014, Chris W instructed an undercover DEA Special Agent to add the letter "R" to the DEA registration number on a prescription, and to change the last digit of the number to seven to create a more realistic-looking prescription.

(16) On November 13, 2014, Chris W instructed an undercover DEA Special

Agent to use the letters "RA" instead of "RF" on the DEA registration number of a prescription that was presented to Chris W.

(17) On November 19, 2014, Chris W instructed an undercover DEA Special Agent to change the last digit of a DEA registration number to six on a prescription that was presented to Chris W.

(18) On November 19, 2014, Chris W instructed an undercover DEA Special Agent on how to create a fictitious DEA registration number.

(19) On or about November 19, 2014, Chris W distributed 30 tablets of hydrocodone and 30 tablets of Xanax to Samantha Pemberton without a prescription.

(20) On December 4, 2014, Chris W distributed 240 tablets of hydrocodone 10/325 mg and 60 tablets of alprazolam 2 mg to an undercover DEA Special Agent pursuant to a prescription that Chris W knew or should have known was fraudulent.

(21) The stock bottle of 1,000-count hydrocodone 10/325 mg and two stock bottles of 100-count methadone³⁹ 10 mg that were in Eric Horton's possession at the time of Horton's arrest on or about January 20, 2015 all had the Respondent pharmacy's stock stickers on them.

(22) The stock bottle of 500-count alprazolam 2 mg that was in Joe Jackson's possession at the time of Joe Jackson's arrest on or about September 14, 2014 had the Respondent pharmacy's stock sticker on it.

(23) The Respondent pharmacy has not filed a theft or loss report with DEA since at least 2012.

The Evidence

In addition to its reliance on the factual stipulations reached by the parties, *supra*, the Government presented its case through the live and/or stipulated testimony⁴⁰ of twenty-six witnesses.⁴¹

Arkansas State Trooper Corporal (Cpl.) Richard Whitley testified that he was on patrol on September 14, 2014 when he was dispatched to a one-vehicle accident where an individual named Joseph Jackson was being detained for leaving the scene. Stipulation of Testimony (SOT) 13(b); Tr. 67–68. Upon his arrival, Cpl. Whitley was advised that another police

officer had noticed a bottle of liquid codeine⁴² in the front seat of the vehicle. SOT 13(b); Tr. 69–71. Cpl. Whitley started a conversation with Jackson and although Jackson denied any drug use, Cpl. Whitley noticed that his speech was slurred and detected the odor of marijuana. SOT 13(b); Tr. 71. Cpl. Whitley then secured Jackson in handcuffs in a police vehicle, and he and the other officers searched Jackson's car.⁴³ SOT 13(b). The troopers smelled marijuana in Jackson's car and observed a bottle of codeine on the seat. SOT 13(c). Also discovered during the car search was a black bag containing a baggie of marijuana,⁴⁴ prescription bottles of drugs, and two handguns. *Id.* Jackson denied any knowledge of the drugs and told Cpl. Whitley that the weapons were not his. SOT 13(c); Tr. 74. Cpl. Whitley searched Jackson for additional weapons, and discovered three large bundles of cash in his pockets totaling \$2,820. SOT 13(c), (d). Among other things, the seized evidence included 74 carisoprodol tablets, 12 alprazolam bars, one bag of suspected marijuana, one bottle of codeine, and two 500-count stock bottles of alprazolam, one of which bore a sticker from the Respondent.⁴⁵ SOT 13(d). Interestingly, the materials seized from Jackson's vehicle also contained a handwritten note bearing the following phrases: "no standing out"; "your people go in as a group and if you leave plz [sic] leave your number"; "please have A–C in your car"; "what to say"; "you have lower back pain and you take hydrocodone 10.325 four time [sic] a day"; "xanax [sic] 2 mg twice a day"; "and your last visit to a doctor 2 to 3 months ago." Gov't Ex. 39 at 3. The seized note bore the obvious hallmarks of crib notes that were apparently contrived to coach others successfully to lie persuasively to obtain controlled substances illegally from DEA practitioner registrants.

The Government also presented the testimony of Dr. Raymond E. Hambuchen, D.D.S., a dentist practicing in Conway, Arkansas, and an acquaintance of the Respondent's (then) PIC, Chris W. Dr. Hambuchen testified that he has known Chris W for years and that they occasionally exchanged text

³⁷ Oxycontin (oxycodone) is a Schedule II controlled substance. *Id.*; Office of Diversion Control, *Oxycodone*, Drug Enforcement Admin. (Mar. 2014), available at http://www.dea/diversion.usdoj.gov/drug_chem_info/oxycodone/oxycodone.pdf.

³⁸ Soma (carisoprodol) is a Schedule IV controlled substance. 21 CFR 1308.14; Office of Diversion Control, *Carisoprodol*, Drug Enforcement Admin. (March 2014), available at http://www.dea/diversion.usdoj.gov/drug_chem_info/carisoprodol/carisoprodol.pdf.

³⁹ Methadone is a Schedule II controlled substance. 21 CFR 1308.12.

⁴⁰ The parties stipulated to the credibility of the stipulated testimony. ALJ Ex. 20. Where applicable, individual credibility determinations regarding live testimony are set forth in the body of this recommended decision.

⁴¹ Two of the Government's witnesses were presented in rebuttal.

⁴² Codeine is a Schedule II controlled substance. 21 CFR 1308.12.

⁴³ A copy of a photograph of Jackson was received into evidence. Gov't Ex. 38; Tr. 70–71.

⁴⁴ Marijuana is a Schedule I controlled substance. 21 CFR 1308.11.

⁴⁵ Photographs of the controlled substances, weapons, and note found in Jackson's car at the time of his arrest were received into evidence. Gov't Ex. 39; Tr. 75–76.

messages. SOT 1(a).⁴⁶ On September 29, 2014, Dr. Hambuchen exchanged a series of text messages with Chris W wherein Chris W stated that he had dispensed controlled substances to one A.R. using Dr. Hambuchen's name as the prescriber and without a prescription. SOT 1(b); Gov't Ex. 2; Tr. 20–21. Dr. Hambuchen testified that he did not know A.R.,⁴⁷ has never issued a prescription for her, and that he wrote a letter to the DEA (Hambuchen Letter), at the request of DEA personnel, on November 12, 2014 memorializing that fact. SOT 1(c); Gov't Ex. 3; Tr. 22–24. The Government acquired and introduced a patient profile on file at the Respondent regarding A.R. that lists Dr. Hambuchen as having authorized eleven prescriptions in her name. Gov't Ex. 4; SOT 20(d), (e); Tr. 185–86. These eleven prescriptions were dispensed at the Respondent between June and December 2014⁴⁸ and included the controlled substances Hydroco/APAP and oxycodone. Gov't Ex. 4.

DEA Task Force Officer (TFO) Chad Wilson testified that he is currently stationed at the DEA Little Rock District Office (Little Rock DO) and that he received and reviewed the Hambuchen Letter. SOT 15(b). After reading the letter, TFO Wilson interviewed Dr. Hambuchen, who confirmed its contents,⁴⁹ forwarded him a copy, and reiterated that he did not know an A.R. *Id.* TFO Wilson generated a report from the Arkansas prescription monitoring program (PMP) on A.R. *Id.*

DEA Special Agent (SA) Mark Mitchell testified that he is also an agent assigned to the Little Rock DO. SOT 3(a). He testified that on four occasions (specifically, November 7, 2014; November 13, 2014; November 19, 2014; and December 4, 2014), he made undercover visits to the Respondent. SOT 3(b). On each occasion, he presented fictitious controlled substance prescriptions to the pharmacist on duty,

⁴⁶ Dr. Hambuchen testified that although he and Chris W had "in the past" texted each other a lot because they were friends, it was unusual in the last few years for him to receive a text message from Chris W. Tr. 24–25.

⁴⁷ The record reflects some confusion regarding A.R.'s first name; however, it is undisputed that Dr. Hambuchen does not know A.R. and did not prescribe any controlled substances to her. Tr. 23; SOT 1(b), (c); 10(d).

⁴⁸ The patient profile report for A.R. submitted by the Government spans the time period of January 2012 through January 2015. Gov't Ex. 4.

⁴⁹ DEA SA Thomas Fisher, another agent stationed at the Little Rock DO, testified that he was also present with TFO Wilson during his interview of Dr. Hambuchen, and corroborated TFO Wilson's account of the interview. SOT 10(c), (d).

Chris W.⁵⁰ *Id.* On November 7, 2014 (Undercover Visit 1), SA Mitchell met with Chris W and presented him with a fraudulent prescription for hydrocodone and alprazolam. SOT 3(c). According to SA Mitchell, during this visit, Chris W instructed him to add the letter "R" to the DEA registration number on the scrip and to change the last number to a "7" to make the false document appear more realistic. *Id.* In SA Mitchell's estimation, Chris W's tutelage on the subject of making better fraudulent scrips demonstrated that Chris W well knew the presented scrip was fictitious. *Id.* The Government introduced a copy of the fraudulent scrip that SA Mitchell presented to Chris W at the Respondent. Gov't Ex. 6; Tr. 106. The scrip, dated November 7, 2014, is made out for "Brian Jackson" (the name SA Mitchell used in his undercover visits) and specifies 120 tablets of Norco and 60 tablets of Xanax. Gov't Ex. 6. During Undercover Visit 1, SA Mitchell was wearing audio and video recording equipment, but due to an equipment failure,⁵¹ nothing was recorded. SOT 3(c). Chris W filled the fraudulent prescription and dispensed the controlled substances to SA Mitchell.⁵² *Id.*

On November 13, 2014 (Undercover Visit 2), SA Mitchell attempted to fill another fictitious prescription for hydrocodone and alprazolam at the

⁵⁰ SA Mitchell testified that the patient name he used on all of his undercover visits was "Brian Jackson." Tr. 154.

⁵¹ DEA SA Michael Willett testified that he is assigned to the Little Rock DO. SOT 4(a). SA Willett's area of responsibilities includes technical surveillance issues, and he is familiar with the video equipment that was used in SA Mitchell's undercover visits to the Respondent. SOT 4(b). SA Willett explained that the video equipment utilized during the four undercover visits has an internal battery that needs to be recharged in order for the video recording device to work properly. *Id.* Although none of the audio/video recordings or transcripts made regarding the four undercover visits were the subject of objection by the Respondent, it is worth noting that some of the tapes contained time/date stamp anomalies. The anomalies were persuasively explained by the combined testimony of SA Willett and TFO Wilson. SOTs 4, 15. Regarding date/time discrepancies encountered in the recording of other undercover visits in this case, SA Willett testified that when an internal battery has been allowed to go completely dead, the device loses track of the actual time. SOT 4(b). If the device's battery was not checked prior to use, the recording will reflect whatever time value is stored in the unit. *Id.* In SA Willett's opinion, this is what happened with some of the video recording devices operated by SA Mitchell on some of the undercover visits to the Respondent. *Id.* Additionally, TFO Wilson provided credible corroborating testimony. SOT 15(e)–(g).

⁵² Photographs of the controlled substances and corresponding receipts received by SA Mitchell during Undercover Visit 1 were received into evidence. Gov't Exs. 7–8; Tr. 129, 131.

Respondent.⁵³ SOT 3(d). SA Mitchell stated that he presented the prescription to Chris W, who informed him that the pharmacy was out of hydrocodone and benzodiazepines, but that he would have more during the first of the following week. *Id.* SA Mitchell recalled that Chris W was mumbling, but that when SA Mitchell asked Chris W if he "did the prescription right," Chris W recommended that he use the letters "RA" instead of "RF," which once again, in SA Mitchell's view, demonstrated that Chris W was well aware that the scrip was a fake. *Id.*; Tr. 145–50. When SA Mitchell asked Chris W again which letters to use, Chris W wrote the letters "RA" down on a piece of paper. SOT 3(d). SA Mitchell testified that after he looked at what Chris W wrote, Chris W scratched out the letters with a pen. *Id.*

On November 19, 2014 (Undercover Visit 3), SA Mitchell returned to the Respondent and attempted to fill another fictitious prescription for hydrocodone and alprazolam.⁵⁴ SOT 3(e). Once again, SA Mitchell encountered Chris W and handed him another fictitious scrip. *Id.* Chris W told Mitchell that he ran out of hydrocodone tablets two days earlier, and that more were not expected until the first of the month, because his supplier had placed limits on how much he could order. *Id.*; Gov't Ex. 18 at 1–2. When SA Mitchell asked Chris W if the fictitious DEA number on the prescription SA Mitchell presented was correct, Chris W instructed him to change the last digit of the DEA number of the prescription to a "6." SOT 3(e). Chris W started counting, described the methodology in creating a DEA COR number to the undercover agent, and volunteered that the prescription that SA Mitchell just handed him looked better than most he sees as the pharmacy.⁵⁵ *Id.*; Gov't Ex. 18 at 4. Chris W also volunteered that he believed that multiple law enforcement agencies were scrutinizing his pharmacy, but the record contains no objective indication that he felt particularly inhibited by this revelation. Gov't Ex. 18 at 2. This crash course in the finer points of creating phony scrips reinforced SA Mitchell's view that Chris W was well aware that the scrip he

⁵³ Audio and video recordings contemporaneously made by SA Mitchell and a corresponding transcript of Undercover Visit 2 were received into evidence. Gov't Exs. 11–14; Tr. 139–40, 145.

⁵⁴ Audio and video recordings contemporaneously made by SA Mitchell and a corresponding transcript of Undercover Visit 3 were received into evidence. Gov't Exs. 16–18, Tr. 141.

⁵⁵ Chris W told SA Mitchell that his fraudulent scrip "looks a lot better than any of the other damn things [he's] seen." Gov't Ex. 18 at 3.

presented was fraudulent. SOT 3(e). When SA Mitchell asked Chris W for his cell phone number so that he could “call you directly [so that] me and you [could] do business,” Chris W took the undercover agent’s cell phone number instead. Gov’t Ex. 18 at 3.

A copy of the fraudulent scrip that SA Mitchell presented to Chris W during Undercover Visit 3 was received into evidence.⁵⁶ Gov’t Ex. 6, 15; Tr. 110. This scrip, dated November 19, 2014, specified a prescription for 240 tablets of Norco and 60 tablets of Xanax. Gov’t Ex. 6. During the course of Undercover Visit 3, SA Mitchell asked Chris W how much it would cost to buy a 1,000-count bottle of hydrocodone. SOT 3(e). Chris W replied, “I don’t usually do that.” *Id.* When the undercover agent told Chris W that he was trying to make some extra money, Chris W responded that what the agent does with the pills after the prescription is filled is none of his business. *Id.*

On December 4, 2014 (Undercover Visit 4), SA Mitchell returned to the Respondent, presented another phony scrip to Chris W, and was dispensed 240 tablets of hydrocodone 10/325 mg and 60 tablets of alprazolam 2 mg.⁵⁷ SOT 3(f). During Chris W’s interaction with SA Mitchell during this visit the two men discussed a possible handgun sale. Over the course of discussion, the undercover agent volunteered to Chris W that he was a “convicted felon.” Gov’t Ex. 33 at 8. Chris W told the agent, “I can’t sell [a gun] to you because I know you’re a convicted felon.” *Id.* Chris W’s reservations concerning the undercover agent’s felony conviction revelation did not apparently awaken in him any sense of heightened scrutiny regarding the wisdom of dispensing powerful controlled substances to him.

Diversion Investigator (DI) Shelli Chupik testified that she is stationed at the Little Rock DO. SOT 2(a); Tr. 107. According to DI Chupik, it was she who created the four fake controlled substances scrips that SA Mitchell used during his undercover visits to the Respondent. Chupik explained that each fake prescription contained the following fictitious information: a doctor’s name, the name and phone

⁵⁶ DI Shelli Chupik, the creator of the fictitious scrip, explained that she deliberately included an authorization for an amount of medication that was inconsistent with the dosage instructions. Tr. 111–13. The discrepancy is highlighted by a text note added by DI Chupik on the copy of the exhibit received (without objection) into evidence. *Id.*; Gov’t Ex. 16.

⁵⁷ Audio and video recordings contemporaneously made by SA Mitchell and a corresponding transcript of Undercover Visit 4 were received into evidence. Gov’t Exs. 31–33; Tr. 142–43, 158–59.

number of a clinic, and a DEA COR number. SOT 2(b).

On January 12, 2015, the Arkansas Board of Pharmacy (Arkansas Pharmacy Board or APB) supplied DI Chupik with a compact disc (APB CD) that contained reports that APB personnel prepared in connection with the pharmacy. SOT 2(e); Tr. 117–19. Included in the materials provided in the APB CD was a completed DEA Report of Theft or Loss of Controlled Substances (DEA–106), signed by Chris W, as the “Owner/Pharmacist-in-Charge.”⁵⁸ SOT 2(e); Gov’t Ex. 53. The DEA–106 that was filed with the Arkansas Pharmacy Board on January 9, 2014 reflects (and purports to report to DEA) that on August 5, 2013, the Respondent was burglarized and that there was a theft of controlled substances. Gov’t Ex. 53. DI Chupik testified that a DEA–106 is a form that, once prepared, must be filed with DEA.⁵⁹ Tr. 120. On January 22, 2015, based on the information contained in the DEA–106, DI Chupik queried the DEA electronic DEA–106 Theft or Loss database and discovered that no DEA–106 forms had been submitted to the DEA by the Respondent in either 2013 or 2014. SOT 2(f); Tr. 120–22. Thus, although the DEA–106 filed by the Respondent with the Arkansas Pharmacy Board ordinarily would/should/does indicate that the document had been filed with DEA to supply DEA with notice of the loss,⁶⁰ this was not the case with this purported burglary.

Conway Police Officer Matthew Edgmon testified that on November 19, 2014, he initiated a traffic stop with a white Tahoe that had no license plate. SOT 8(b); Tr. 29. After some conversation with the driver, Samantha Pemberton, he ascertained that she had a suspended driver’s license and that the (plateless) vehicle she was driving

⁵⁸ A copy of this DEA–106 was received into evidence. Gov’t Ex. 53; Tr. 119.

⁵⁹ Former Respondent PIC Terry Swaim testified that the Respondent had a burglary in August of 2013 that resulted in the theft of approximately two thousand Soma (carisoprodol) pills and some Xanax (alprazolam), and that both Tom Watson and Chris W were aware of the incident. Tr. 259–60.

⁶⁰ DI Chupik clarified that the duty to file a DEA–106 occurs “pretty much immediately” after discovery of a theft or loss of controlled substances and is not related to the dates when a pharmacy registrant is required to conduct a biennial inventory. Tr. 122–24. Although DI Chupik testified that she believed that the DEA–106 must be filed within seven days (Tr. 124), the DEA regulations actually provide that a “registrant shall notify [the local DEA Field Division Office], in writing, of [a] theft or significant loss of any controlled substances within one business day of discovery of such loss or theft [and] shall also complete, and submit to the Field Division Office in his area, [a DEA–106] regarding the loss or theft.” 21 CFR 1301.76(b) (2015).

was owned by Chris W, whom she described to Officer Edgmon as the pharmacist/owner of the Respondent as well as her boyfriend.⁶¹ SOT 8(b). Pemberton consented to a search of Chris W’s car. A search of her purse yielded numerous pill bottles, many of which were unlabeled.⁶² SOT 8(c), (d); Tr. 29–32; Gov’t Ex. 19. One of these unlabeled bottles had pills that Officer Edgmon recognized as likely being alprazolam. SOT 8(d). Pemberton’s purse also contained bottles with labels bearing her name, as well as other labeled bottles containing non-controlled pills. *Id.* Officer Edgmon subsequently took Pemberton into custody for possession of a controlled substance, advised her of her *Miranda* rights (which Pemberton acknowledged she understood) and then questioned her about the pills he found in her purse. SOT 8(e). Pemberton told Officer Edgmon that she had Xanax and “hydros” (hydrocodone) and claimed that she had prescriptions for these. *Id.* Pemberton was transported to the Conway Police Department (CPD) for processing, and Officer Edgmon secured the contraband. *Id.*

In addition to corroborating many of the details of her arrest, Samantha Pemberton testified that she was Chris W’s girlfriend, and that it is her understanding that he is an owner of the Respondent pharmacy. SOT 7(a). According to Pemberton, prior to the traffic stop, Chris W had given her controlled substances (specifically, 30 hydrocodone 10/325 mg and 30 Xanax 2 mg) in unmarked bottles and without a prescription, and at the time of her arrest, those medications were still in her possession. SOT 7(b).

CPD narcotics investigator Thomas Kennedy testified that he interviewed Pemberton at CPD after her arrest on November 19 and that this interview was recorded.⁶³ SOT 9(b); Tr. 33. During the interview, Pemberton stated that: (1) she received at least some of the controlled substances that were in her purse from Chris W; (2) she had prescriptions for the controlled

⁶¹ The Government introduced a copy of an insurance claim letter issued to “Jennifer Watson and Christopher Watson” on November 4, 2014, stating that on October 28, 2014, Pemberton was involved in a loss with a vehicle (a “2013 Infinity”) on their policy. Gov’t Ex. 27; Tr. 214–18. Additionally, Pemberton told Investigator Kennedy in the course of the interview at CPD that Chris W was her boyfriend and her pharmacist. Tr. 38.

⁶² Photographs of the controlled substances found in Pemberton’s car at the time of her November 19, 2014 arrest were received into evidence. Gov’t Ex. 19; Tr. 31–32.

⁶³ A recording and corresponding transcript of the interview of Pemberton conducted by Investigator Kennedy on November 19, 2014 were received into evidence. Gov’t Exs. 25–26; Tr. 36, 38.

substances in unmarked bottles, and that she had received those controlled substances from the Respondent where her boyfriend, Chris W, was the pharmacist; (3) she had just filled prescriptions for hydrocodone and Xanax at the Respondent, and that she received the controlled substances from Chris W in unmarked bottles; and (4) she was prescribed 30 hydrocodone 10/325 mg and 30 Xanax 2 mg, but was not able to name the doctor who prescribed the pills. SOT 9(c); Gov't Ex. 26 at 6–7.

Investigator Kennedy telephoned Chris W during the afternoon of the day Pemberton was apprehended and recorded that conversation.⁶⁴ SOT 9(d). When Investigator Kennedy informed Chris W that Pemberton had been arrested, Chris W replied that he only vaguely knew her. Specifically, Chris W said “I think I know who she is,” and amorphously described her as “blonde” and “kinda cute.” SOT 9(e). Chris W told Investigator Kennedy that he thought he recalled that Pemberton may have come into the Respondent that morning, and he admitted that on or about November 19 he allowed her to “borrow” some hydrocodone and Xanax without a prescription, and that the pharmacy had “loaned” her some pills. *Id.* During the call, Chris W allowed that “we let her borrow a few because she was out,” and “I know we loaned her some hydrocodone and seemed like Xanax, maybe 2 mg.” *Id.* When Investigator Kennedy asked Chris W how much he had dispensed to Pemberton, he responded, “I want to say like 30 of each” “just because she gets like 90 at a time.” *Id.* Chris W assured Investigator Kennedy that the pharmacy was “just waiting on [the doctor’s office] to call back because that office is notoriously slow.” *Id.*

Investigator Kennedy made repeated requests to Chris W and Pemberton to provide scrips for the 30 hydrocodone pills and 30 Xanax pills that Chris W admitted he had dispensed to Pemberton on or about November 19, but neither supplied any documentation. SOT 9(f). Chris W also provided Investigator Kennedy with conflicting information about the identity of Pemberton’s prescribing physician. SOT 9(g). Initially, Chris W told him that the prescribing physician was a Dr. Humbard and agreed to fax a copy of the prescription. *Id.*

On November 20, the day following the arrest and phone call, Investigator

Kennedy did receive a fax (Fax 1) from the Respondent, but contrary to Chris W’s representations on the phone, Fax 1 contained no scrips, but only a copy of two prescription labels (*i.e.*, pharmacy fill stickers) from the Respondent.⁶⁵ *Id.*; Tr. 52–53. Further, not only did Fax 1 contain labels instead of scrips, but in Investigator Kennedy’s review of those prescription labels, he determined that the labels did not even correspond to the information Chris W had provided him during their phone conversation about the controlled substances he said he had dispensed to Pemberton the previous day. SOT 9(g). Instead, the labels with Fax 1 reflected prescriptions that had been filled on October 9, 2014 (not November 19, 2014), and had been issued for 75 alprazolam 2 mg tablets and 75 Hydroco/APAP tablets 10/325 mg (not 30 tablets of each drug as Chris W had stated during the previous day’s phone call). *Id.* Moreover, the labels stated that the prescriptions had been issued by a “Dr. Arnold”, not a “Dr. Humbard.” *Id.* Furthermore, an examination of the labels that were provided indicated that both directed that no refills remained on the prescriptions. *Id.* Thus, even on their face, the prescriptions supplied by Chris W in Fax 1 that were purportedly used for the October 9, 2014 dispensing to Pemberton were no longer valid for refilling anything on November 19, 2014 and could not have been properly used for that purpose. *Id.*

On November 21, three days following Pemberton’s arrest, Investigator Kennedy contacted Pemberton and notified her that he had not received scrips for the drugs she received on November 19 from the Respondent.⁶⁶ SOT 9(h). In response, Pemberton told Kennedy that she believed that Chris W had sent them. *Id.* When Investigator Kennedy explained that he had not received the scrips, Pemberton assured him that she would take care of it. *Id.* Pemberton called Investigator Kennedy back later in the day and told him that Chris W would fax the scrips. *Id.* Sometime later in the day, following his phone call with Pemberton, Investigator Kennedy telephoned Chris W at the Respondent and recorded the call.⁶⁷ SOT 9(i). Chris W insisted that he had faxed over the

labels the other day, but Investigator Kennedy again explained that he still needed to see the scrip. *Id.*; Tr. 55–56. Chris W then clarified that he did not give the scrip to Pemberton because she did not want her to try to take it somewhere else, but that he would have one of his technicians look up the scrip and send it over. SOT 9(i).

Later in the day, Investigator Kennedy did receive another fax (Fax 2) from the Respondent but once again, the fax had was not a scrip, but merely a page of lined paper covered in scribbles, which, based on the investigator’s experience, appeared to him to be a page from a notepad customarily used for call-in type prescriptions.⁶⁸ SOT 9(j); Tr. 55, 58–59. The Fax 2 notepad page did not contain any reference to a prescription issued to dispense medication to Pemberton on November 19. SOT 9(j). Instead, the only reference to Pemberton on the notepad page appeared in the upper right-hand corner of the fax, which included a handwritten date that appeared to be either “10–4–14” or “10–9–14”; beneath that date appeared to be the name “Samantha Pemberton,” the text “Xanax 2mg, TID, #75”, “Narco 10/325”, some additional writing that Investigator Kennedy was unable to decipher, and then “#75”. *Id.* The name “James Arnold” is written at the bottom of the notation. Gov’t Ex. 49. Investigator Kennedy was quite clear that he had plainly articulated that he needed to see the scrips. Tr. 57–58.

Investigator Kennedy testified that on January 2, 2015, he called Pemberton again to remind her that he had still not received a scrip. SOT 9(k). In response, she stated that she would try to get the prescription and deliver it to him. *Id.* Four days later, on January 6, 2015, Pemberton brought Investigator Kennedy two scrips, both of which bore the date October 9, 2014, and a signature from a Dr. James Arnold.⁶⁹ Tr. 61–63. The Government also introduced a copy of Pemberton’s patient profile from the Respondent, which indicates that two prescriptions (alprazolam and hydroco/APAP) were dispensed to Pemberton on October 9, 2014. Gov’t Ex. 24. According to the patient profile, James Arnold, M.D. is listed as the prescriber for both prescriptions. *Id.*

In her testimony, Pemberton indicates that on January 6, 2015, approximately two months after her arrest, she did give Investigator Kennedy scrips that corresponded to the controlled

⁶⁵ A copy of Fax 1 was received into evidence. Gov’t Ex. 48; Tr. 54.

⁶⁶ A recording and corresponding transcript of Investigator Kennedy’s phone call with Pemberton were received into evidence. Gov’t Exs. 66–67; Tr. 47–50.

⁶⁷ A recording and corresponding transcript of Investigator Kennedy’s phone call with Chris W were received into evidence. Gov’t Exs. 22–23; Tr. 44–46.

⁶⁸ A copy of Fax 2 was received into evidence. Gov’t Ex. 49; Tr. 59–60.

⁶⁹ Copies of these scrips were received into evidence. Gov’t Exs. 51, 52; Tr. 64–66.

⁶⁴ A recording and corresponding transcript of Investigator Kennedy’s November 19, 2014 phone call with Chris W were received into evidence. Gov’t Exs. 20–21; Tr. 41, 43.

substances in her possession on the day she was arrested. SOT 7(d). The scrips Pemberton gave Investigator Kennedy were dated October 9, 2014 and were issued for 75 tablets of hydrocodone 10/325 mg and 75 tablets of alprazolam 2 mg, and bore the purported signature of Dr. James Arnold of the Baptist Emergency Medicine Clinic. *Id.*

Dr. James Arnold, M.D., testified that he is a doctor practicing at the Baptist Springhill Clinic in North Little Rock, Arkansas. SOT 22(a). He stated that by virtue of the fact that he practices in an emergency room, he does not prescribe more than twenty hydrocodone tablets at one time. SOT 22(b). Dr. Arnold also indicated that he has checked his records and determined that he has not treated and does not know a person named Samantha Pemberton.⁷⁰ SOT 22(c). On January 7, 2015, Investigator Kennedy turned over to TFO Wilson the two scrips bearing Dr. Arnold's name that Samantha Pemberton had given him. SOT 15(c). Both prescriptions had stickers on them indicating that they were filled on October 9, 2014, and both were marked "no refills." *Id.*

DEA Task Force Officer (TFO) Robert Puckett testified that he is a member of the Beebe, Arkansas Police Department, is cross-designated as a DEA TFO, and is currently stationed at the Little Rock DO. SOT 5(a); Tr. 91. TFO Puckett reviewed surveillance videos of the interior and exterior of the Respondent that were recorded on January 20, 2015, and testified that he isolated screen captures from the video. SOT 5(c); Gov't Ex. 36. Chris W and his friend, Eric Horton, are depicted in the video footage. The Government introduced the screen captures of the surveillance videos created by TFO Puckett, as well as TFO Puckett's written narrative describing the actions of Horton and Chris W. Tr. 98; Gov't Ex. 36.⁷¹

According to TFO Puckett's (unchallenged) account, the surveillance tapes show Chris W handing Horton a bottle of medication, some of the contents of which Horton pours into an amber prescription bottle. Gov't Ex. 36 at 1–2. Horton can then be seen placing items into a blue tote bag on the floor. Horton then pulls a stock bottle of medication from the shelf, shows the bottle to Chris W, puts it into a pharmacy bag, and drops the pharmacy bag with some other items into a blue tote bag. *Id.* at 2. Horton takes another stock medication bottle from a

pharmacy shelf, the bottle disappears from view, and Horton can be seen shoving something into his jacket pocket and walking out of the pharmacy. *Id.* at 2–6. A camera outside the pharmacy picks up Horton throwing something into a dumpster and placing the aforementioned blue tote⁷² into a white pickup truck. *Id.* at 10.

Upon Horton's return to the pharmacy, Chris W can be seen placing a stock medication bottle on the counter for Horton to count out into multiple amber prescription bottles, one of which he hands to Chris W, and one of which he places in his own pocket. *Id.* at 7–13. Horton then fills a pharmacy bag with the amber prescription bottles and again leaves the pharmacy. *Id.* at 13. A camera outside the pharmacy captures Horton pulling away from the pharmacy in the white pickup truck. *Id.* at 11. Other photographs depict controlled substances that were in the blue tote upon its subsequent seizure and inventory. *Id.* at 11–13.

Shortly after Horton departed the Respondent, he was pulled over by Arkansas State Trooper First Class (Trooper) Kevin Grows. Trooper Grows testified that when he observed Horton's white truck change lanes twice without the benefit of a turn signal,⁷³ he initiated a traffic stop. SOT 11(b); Tr. 77–78. At the time of the stop, Horton handed the trooper Chris W's driver's license, eventually explaining that he had the license so he could use Chris W's credit card. SOT 11(b); Tr. 78–79. Horton ultimately did present his own driver's license,⁷⁴ a run of which through the Arkansas Crime Information Center (ACIC) database⁷⁵ revealed two outstanding warrants, one of which was active. SOT 11(c). In response to a question from Trooper Grows, Horton indicated that he was not armed, but that there were two pistols in the truck he was driving. *Id.*; Tr. 81. Horton was searched for weapons, handcuffed, and placed into the trooper's vehicle.⁷⁶ SOT 11(c). Trooper Grows found two handguns sitting on the rear floorboard (one of which had a chambered round). Tr. 83. When asked if there was

⁷² A blue tote filled with controlled medications was seized from the white pickup truck Horton was driving at the time of his arrest later that evening. Tr. 83.

⁷³ Trooper Grows testified that a traffic citation was issued regarding the failure to signal violation as well as driving without insurance. Tr. 85.

⁷⁴ Tr. 79–80.

⁷⁵ In his live testimony, Trooper Grows stated that the license check was initiated through the Federal Bureau of Investigation's National Crime Information Center (NCIC) database. Tr. 79. The variance is not material.

⁷⁶ A copy of Horton's arrest photograph was received into evidence. Gov't Ex. 34; Tr. 86–87.

anything else illegal in his vehicle, Horton gave no response, but an inventory search of the truck revealed a blue tote bag that contained a stock bottle of hydrocodone⁷⁷ and two 100-count methadone 10 mg stock bottles.⁷⁸ SOT 11(d); Tr. 83–84. Horton also had \$1,529 in cash on his person, and the methadone stock bottles seized had the Respondent's pharmacy stickers on them. SOT 11(d), (e). Additionally, Trooper Grows testified:

We found a pair of tennis shoes that also had another bottle of pills that were mixed in. We also found a meth pipe and a baggie of stuff that appeared to be meth as well, and there was a couple of other [C]oke cans as well that you could unscrew the lid and had false compartments in them.

Tr. 84.

DI Inez Davis testified that she is currently assigned to the Little Rock DO. SOT 12(a); Tr. 213. The certified copy of the Respondent's incorporation from the State of Arkansas that DI Davis procured reflects that Chris W is listed among the Respondent pharmacy's officers, and specifically is listed as vice-president, controller, and board member of the Respondent. Gov't Ex. 50; SOT 12(b); Tr. 218–19.

On January 27, 2015, a federal search warrant was executed on the Respondent simultaneously with the service of the OSC/ISO that initiated these proceedings (pharmacy search warrant execution). Little Rock DO Group Supervisor (GS) Lisa Barnhill testified that during the pharmacy search warrant execution, it was she who coordinated and supervised the search of the pharmacy's records. SOT 14(c). DEA and other law enforcement personnel associated with the search were able to locate patient profiles for Eric Horton, Brian Jackson (the undercover identity used by SA Mitchell), Samantha Pemberton, and A.R. However, although the vehicle he was driving on the night of his arrest contained stock bottles of controlled substances adorned with labels from the Respondent pharmacy, there was no patient profile for Joseph Jackson at the pharmacy.⁷⁹ *Id.* GS Barnhill also related that she conducted an audit of Respondent pharmacy records obtained during the pharmacy search warrant

⁷⁷ In Trooper Grows's estimation, it was a "like [a] thousand count bottle of hydrocodone[. . .]" Tr. 83.

⁷⁸ Photographs of the controlled substances found in Horton's vehicle were received into evidence. Gov't Ex. 35; Tr. 87–89.

⁷⁹ This testimony is consistent with the recollection of DI Pamela Lee and DI Davis, who were also present. SOTs 20, 12(c), (d). The patient profiles seized that day were received into evidence. Gov't Exs. 4, 24, 37; Tr. 187, 188–89, 191–92; *see also* SOT 18.

⁷⁰ TFO Wilson ascertained from Dr. Arnold that he is not Pemberton's doctor and did not issue the scrips. SOT 15(d).

⁷¹ A clearer version of this exhibit was subsequently substituted in the record with the assent of the Respondent. Tr. 387–88.

execution, focusing on varying strengths of “oxycodone, hydrocodone, alprazolam and generic Dilaudid.”⁸⁰ Tr. 181. According to GS Barnhill, her audit of just those medications yielded a “shortage of close to a quarter million pills.” *Id.* Barnhill also testified that the search she conducted of all of relevant paper and electronic records at the Little Rock DO reflects no report of theft or loss of controlled substances filed with DEA by the Respondent between January 1, 2012 and January 22, 2014. SOT 14(a), (b); Gov’t Ex. 63; Tr. 161, 175–76.

DI Carolina Vazquez-Lopez testified that she is assigned to the Little Rock DO, that she was present at the pharmacy search warrant execution, and that, as she was directed to do, she gathered all pertinent required DEA records from the Respondent, including DEA Order Form 222s, Controlled Substance Ordering System (CSOS) records, purchase invoices, DEA Form 41/Registrants Inventory of Drugs Surrendered, DEA Form 106/Theft or Loss of Controlled Substances, Power of Attorney, and Inventory Records. SOT 19(a)–(c). DI Vazquez-Lopez testified that during the pharmacy search warrant execution she was assisted in gathering records by Bettie Wood, a pharmacy technician (Pharm. Tech.) employed at the Respondent. SOT 19(d). DI Vazquez-Lopez testified that Pharm. Tech. Wood told her that the Respondent only had partial invoices for December 2014 and January 2015 because Chris W’s friend, Eric Horton (a non-employee), had removed all of the other invoices at Chris W’s request in early December 2014. SOT 19(e).

DI Vazquez-Lopez asked Pharm. Tech. Wood whether the Respondent had any reported thefts or losses in the last two years. SOT 19(f). Pharm. Tech. Wood stated that there had been an incident in either August or October 2013 when two 1,000-count bottles of carisoprodol were stolen. *Id.* When DI Vazquez-Lopez asked Pharm. Tech. Wood for a copy of the DEA Form 106/Theft or Loss Form, she stated that Chris W would have it. *Id.* When DI Vazquez-Lopez asked Pharm. Tech. Wood where the controlled substance prescriptions were stored, she explained that the prescriptions were stored in the back office, but only as far back as April 2014 because prescriptions prior to 2012 were lost in a fire, and the balance had been taken away by another friend of Chris

W’s, Eric Horton, who was also not employed at the pharmacy. SOT 19(f). When DI Vazquez-Lopez asked Pharm. Tech. Wood for the Respondent’s most recent physical inventory records, Pharm. Tech. Wood stated that Chris W had taken the Respondent’s last inventory records after a state inspection the previous year, and that there were no other copies in the Respondent pharmacy. SOT 19(i).

Pharm. Tech. June Gilbert testified that she has been a pharmacy technician at the Respondent for approximately thirty-one years, and that it has been her experience that controlled substances frequently disappear from the Respondent overnight. SOT 17(a), (c). Pharm. Tech. Gilbert also related that she has seen Chris W repeatedly give out pills without a prescription, and that Eric Horton and Joseph Jackson are not employees of the Respondent. SOT 17(b), (c).

Pharm. Tech. Alyssa Burns testified that she has been a pharmacy technician at the Respondent for approximately one year. SOT 16(a). Similar to Pharm. Tech. Gilbert’s experience, Pharm. Tech. Burns testified to her observation that items delivered in medication shipments to the Respondent—mostly oxycodone—regularly turn up missing the morning after delivery. SOT 16(b). It is Pharm. Tech. Burns’s opinion that orders for controlled substances placed by the Respondent are excessive in light of the number of prescriptions that are actually filled there. *Id.* According to Pharm. Tech. Burns, the Respondent usually reaches its controlled substance limit with McKesson—one of its pharmaceutical suppliers—on the ninth day of each month.⁸¹ *Id.*

Pharm. Tech. Burns also stated that Chris W has ordered her to fill prescriptions for hydrocodone, Xanax, Soma, and promethazine cough syrup without a hard copy of a prescription, and that he once directed her to fill four identical prescriptions for Xanax, hydrocodone, and Soma for a customer (B.E.) in a single week.⁸² SOT 16(e). Pharm. Tech. Burns has seen Chris W leave the pharmacy with drugs in his backpack, and has actually seen a stock bottle of hydrocodone with tablets in Chris W’s open backpack. SOT 16(f).

⁸¹ The Government introduced into evidence copies of lists generated by the Respondent’s distributors indicating the products sold to the Respondent between 2013 and 2015. Gov’t Exs. 42–43, 68 (McKesson); 44–45 (Harvard); 46–47 (Top Rx); Tr. 167, 169, 172–73.

⁸² A copy of B.E.’s patient profile at the Respondent, as well as copies of prescriptions issued to B.E., were introduced into evidence. Gov’t Ex. 65; Tr. 194. B.E.’s patient profile does indicate that this was the case from January 2–8, 2014. Gov’t Ex. 65 at 9.

Like Pharm. Tech. Gilbert, Pharm. Tech. Burns affirmed that neither Eric Horton nor Joseph Jackson is an employee of the Respondent.⁸³ SOT 16(c). She believes that Horton is a friend⁸⁴ of Chris W’s, and she has seen Horton take bottles of controlled substances off of shelves at the Respondent and place them in his pockets. *Id.* Pharm. Tech. Burns further testified that several weeks before the pharmacy search warrant execution, Chris W and Horton removed a large number of invoices and hard copies of prescriptions that were previously filled from the pharmacy, but she does not know what became of the documents they took. SOT 16(g).

TFO Eli Fowlkes testified that he is a detective with the Benton, Arkansas Police Department and is cross-designated as a DEA Task Force Officer stationed at the Little Rock DO. SOT 21(a); Tr. 197–98. TFO Fowlkes testified that on January 27, 2015, he participated in the execution of a search warrant at Chris W’s residence (Chris W residence search warrant execution). SOT 21(b); Tr. 199–200. During the search of Chris W’s house, TFO Fowlkes discovered numerous controlled substance scrips, which he photographed and inventoried into DEA custody. SOT 21(c), (d); Gov’t Exs. 41, 54–62; Tr. 200–07.

The Government also presented the testimony of pharmacist Tracy Swaim. Swaim testified that he is currently employed as a part-time⁸⁵ pharmacist at the Respondent, but up until October 10, 2014, he had worked there as a full-time pharmacist for twenty-six years, and was the Respondent’s pharmacist-in-charge (PIC) until January of 2012. Tr. 232–33.

Swaim explained that controlled drug purchases at the Respondent are conducted through the DEA Controlled Substance Ordering System (CSOS) program, and that a single password, issued in Swaim’s name, is and has been used by all Respondent employees who order controlled medications. Tr. 245–48; *see also* Tr. 365–66. According to Swaim, the Respondent purchased controlled substances from the McKesson Drug Company (McKesson), Top Rx, and The Harvard Drug Group. Tr. 248; *see also* Gov’t Exs. 42–47, 68. Swaim explained that prior to the commencement of Chris W’s involvement with the Respondent, McKesson was able to provide an adequate supply to keep up with

⁸³ Long-time Respondent PIC Tracy Swaim also testified that Jackson was never an employee at the Respondent. Tr. 235; Gov’t Ex. 38.

⁸⁴ Samantha Pemberton testified that has seen Chris W supply Horton with controlled substances at parties at Chris W’s residence. SOT 7(c).

⁸⁵ Tr. 266.

⁸⁰ Dilaudid (hydromorphone) is a Schedule II controlled substance. 21 CFR 1308.12; Office of Diversion Control, *Hydromorphone*, Drug Enforcement Admin. (July 2013), available at http://www.deadiversion.usdoj.gov/drug_chem_info/hydromorphone.pdf.

demand, but that resort was had to the other two suppliers when the amount of controlled drugs ordered by the Respondent increased by one-third⁸⁶ and rose to a level exceeding McKesson's quantity limits. Tr. 248–51.

In the course of the hearing, Swaim was shown photographs of Joseph Jackson and Eric Horton and affirmed that neither man had ever been an employee of the Respondent. Tr. 235–36; Gov't Ex. 38, 34. Swaim testified that although he did not know Jackson at all, he did recognize Horton as a man that periodically came to the store to pick up cream that the pharmacy regularly ordered to manufacture Redneck Remedy, a cream produced by a company called Matlon, Incorporated (Matlon).⁸⁷ Tr. 236–40; *see also* Gov't Ex. 69. According to Swaim, although Horton was not an employee and not a pharmacist, he was routinely permitted into the restricted pharmacy area, and he regularly made deliveries of prescriptions (including controlled substances) to customers in the Mayflower area for the Respondent. Tr. 237–39. Swaim testified that to his knowledge, Horton worked with Chris W in connection with Chris W's Matlon business. Tr. 236.

Swaim also related that the Respondent was burglarized in August of 2013, resulting in the theft of approximately two thousand carisoprodol pills and some Xanax. Tr. 259–60. The police were notified, and both Chris W and the Respondent's owner, Tom Watson, were aware of the incident. Tr. 260.

Swaim explained that since his retirement approximately ten to twelve years ago, the Respondent's owner, Tom Watson, would visit the business (which included the Big Star grocery store in which the pharmacy was located) approximately once a week. Tr. 240–41. According to Swaim, prior to his retirement, Watson worked two days per week part-time as a relief pharmacist while Swaim served as the full-time PIC. Tr. 241–44.

Swaim testified that in January of 2012, he informed Watson that his observation of improper controlled substance refills approved by Watson's son, Chris W, sufficiently troubled him that he was resigning as the PIC. Tr. 251–56. Swaim recounted the conversation in this manner:

I just told him I was not going to be pharmacist-in-charge. . . . I said that I can't sleep at night, and I'm not—I don't want to go to jail over something. And Tom [Watson] said don't worry, nobody's going to jail. If anybody does, I will.

Tr. 253. Swaim testified that he completed the paperwork and inventory required to hand over PIC control and accountability of the pharmacy to Chris W, and that notwithstanding this diminution in his responsibilities, neither his compensation nor his hours were reduced. Tr. 254–55, 266–67.

Swaim also recounted a conversation he overheard between long-term Respondent Pharm. Tech. June Gilbert⁸⁸ and Watson that occurred in September of 2014,⁸⁹ approximately two years and nine months after surrendering his PIC responsibilities. Swaim testified that he heard Pharm. Tech. Gilbert tell Watson that his son, Chris W, was “giving away” medication. Tr. 256–57. In response to what he heard, Swaim told Watson that he (Swaim) “just can't take this anymore [and that he was] going to give notice . . . if you don't stop [Chris W].” Tr. 257. In reply, Tom Watson asked Swaim not to leave and assured him that he would “put a stop to it.” *Id.* According to Swaim, “he looked me in the eye and said ‘trust me,’ and I said ‘okay, I will.’” *Id.*; *see also* Tr. 265. Swaim testified that four days later, upon ascertaining from the pharmacy staff that, notwithstanding Watson's assurances to the contrary, nothing had changed about the improper manner in which (now PIC) Chris W was executing his responsibilities as a pharmacist, he called Watson and gave two weeks' notice.⁹⁰ Tr. 257.

Swaim's testimony (which was not the subject of a stipulation regarding content or credibility) was detailed, internally consistent, plausible, and presented no objective factual basis upon which to challenge it for bias. Simply put, Swaim has nothing to gain or lose based on the outcome of this case. The fact that he served the Respondent for twenty-six years as its PIC and was even hired back after the pharmacy search warrant execution, is powerful evidence that even Watson knows that Swaim is a man who can be trusted. The witness's testimony presented as thoughtful, coherent, and

unbiased, and is fully credited in this recommended decision.

The Government also presented the testimony of Grant Goode, Tom Watson's nephew⁹¹ and a former staff pharmacist at the Respondent. Tr. 270–71. Goode testified that he started at the Respondent working one day in November 2014 and then for approximately two months, starting in mid-December 2014, working on a schedule that increased from about twenty-five hours per week to ninety-six hours per two weeks. Tr. 271. Goode recalled that during this time, his cousin Chris W would enter the pharmacy for varying amounts of time, generally less than twenty-five hours per week, and do non-pharmacist work. Tr. 273–74.

Goode testified that while working at the Respondent, he fielded several telephonic inquiries from prescribing physicians that led him to discover that pharmacy patient profiles described numerous Schedule II controlled substance dispensing events where no hard copy of the scrip was present in the file and where the purported prescribing doctor had no recollection of authorizing the medication. Tr. 274–75. According to Goode, when he examined the pharmacy files, he discovered other occasions where controlled substances had been dispensed but no scrip hard copy was retained. Tr. 275–76. Based on what he discovered, Goode began contacting prescribing doctors on his own and discovered “dozens” of cases where controlled substances were dispensed and no hard copy scrip was present. Tr. 276. Goode testified that when he brought this issue to the attention of Watson, his response was that the scrips “must have been put in the wrong place in the files. Maybe the girls, maybe the technicians misplaced the prescriptions.” Tr. 277. Goode kept checking pharmacy files and made inquiry of the technicians. Tr. 278.

Goode also related that on two occasions he observed Chris W take thousand-count stock bottles⁹² of hydrocodone and place them into his backpack. Tr. 278. Further, Goode stated that on one occasion, Tom Watson was present and observed Chris W pack the stock bottle into his backpack. Tr. 280.

Goode testified that he called the Pharmacy Board on December 17, 2014 and related his suspicions regarding diversion as well as some concerns he had about whether Chris W had an

⁸⁶ Tr. 262–63.

⁸⁷ As discussed in greater detail *infra*, Matlon is a company that is jointly owned and managed by Chris W and Glenn Wood, a pharmacist who now works at the Respondent and previously worked at a another pharmacy owned by Tom Watson in Mayflower, Arkansas. Gov't Exs. 69, 70.

⁸⁸ *See* SOT 17.

⁸⁹ Tr. 265. Although Swaim initially indicated that the date was in September of 2015 (a date in the future), he subsequently corrected the date to 2014.

⁹⁰ The record does not reflect any other area of contention between Swaim and Watson and in fact, Watson hired Swaim back to work part-time at the Respondent after the pharmacy search warrant execution. Tr. 266.

⁹¹ Tr. 274.

⁹² Goode testified that this size bottle of medication was used to contain stock and fill prescriptions, but would never be a quantity that would be dispensed to an individual patient. Tr. 279–80.

addiction problem. Tr. 281. According to Goode, personnel at the Pharmacy Board advised him that they would be dispatching someone to investigate the pharmacy, and that in the meantime, he should “just stay put.” Tr. 282. Goode explained that on January 2, 2015, in the midst of “staying put,” one of the Respondent’s pharmacy technicians brought to his attention forged Schedule II scrips that had been dispensed with Goode’s initials on the label. Tr. 282–83. When Goode showed the forged scrips to Watson, the latter suggested that (long-time pharmacy technician) “June [Gilbert] must be doing that.” Tr. 283. Goode pressed him on the issue and reminded him that his son, Chris W, had access to a laptop that allowed him to log in and print out pharmacy paperwork. Tr. 283. That day, Goode faxed copies of the fraudulent scrips to the Pharmacy Board, and followed up with a phone call to both the Pharmacy Board and DEA. Tr. 284–85.

On February 5, 2015, several days after the (January 27) pharmacy search warrant execution, Goode confronted his cousin, Chris W, with his suspicions. Tr. 286. By Chris W’s demeanor, Goode got the sense that his cousin had identified him as DEA’s source, and shortly thereafter, Chris W informed him that he would be substituting Goode with a pharmacist named Glenn Wood. Tr. 287. Goode also recalled being approached by Tom Watson near the end of January 2015 and told that customers had registered complaints about his unwillingness to dispense scrips they had presented, and that one customer was even concerned that Goode would “turn [him] into DEA.” Tr. 288. Goode got the sense that Watson was disappointed in him for declining to fill the scrips as presented. Tr. 289.

Pharmacist Glenn Wood and Goode communicated by text and phone a few days later. Tr. 291–92. When Goode asked Wood about his hours for the week, Wood related his understanding that Watson had planned to let Goode know that his services would no longer be required at the pharmacy. *Id.* The conversation turned somewhat heated, and Goode essentially accused Wood of looking the other way in the face of misconduct being committed by Chris W at the Respondent as well as the Mayflower pharmacy, where Wood and Chris W previously worked together.⁹³

⁹³ Goode also testified that Tom Watson told him that “he would like to kill a couple of DEA agents.” Tr. 302. Even assuming that Watson could have been speaking during a time of some agitation, such a statement demonstrates a deplorable and dangerous lack of judgment on his part. The Government did not offer this not-too-veiled threat

Tr. 291–92. Watson did eventually let Goode know that Glenn Wood would be taking his hours. Tr. 290. Watson subsequently telephoned Goode and told him he was “upset” about statements Goode had made to DEA, and that he felt Goode “had hung him out to dry.” Tr. 291.

Goode’s testimony was not the subject of a stipulation regarding content or credibility, but the testimony was sufficiently detailed, plausible, and internally consistent to be fully credited in this decision. Although there were vague references to some unrelated, historical family acrimony that did not specifically involve the Watsons, there was no evidence that would support any level of bias that impacts on this witness’s credibility, and his testimony is fully credited in this recommended decision.

The Respondent called three witnesses in its case-in-chief: Tom Watson, the pharmacist-majority-owner⁹⁴ of the Respondent; Glenn Wood, the pharmacist Watson selected to succeed his son as the PIC; and Brenda McGrady,⁹⁵ an official from the Pharmacy Board, who attested to the fact that neither of these professional pharmacists has been subject to discipline before that body.

Glenn Wood is the pharmacist who supplanted the hours worked by Grant Goode at the Respondent after Grant Goode registered concerns about diversion there to the Pharmacy Board,⁹⁶ and the individual who has been selected by the Respondent to assume the duties of its PIC permanently. Tr. 313. Wood testified that he has his Pharm. D. degree, has been a licensed pharmacist in Arkansas for approximately nine years, and is a member of the Arkansas Pharmacists Association. Tr. 391, 393. Wood stated that he has never been aware of a

against law enforcement officers on its case-in-chief, and in an exercise of commendable candor, notified the tribunal at the outset of the case that in proceedings unrelated to this case, a United States Magistrate Judge had declined to credit this testimony from Goode. Tr. 11; ALJ Ex. 21. The parties acquiesced in official notice (*see* 5 U.S.C. 556(e) (2012)) that this testimony had previously been found unsupported by a United States Magistrate Judge in an unrelated proceeding (Tr. 304), and the order issued by the Magistrate Judge, which denied the Government’s motion to revoke Chris W’s bond based on these comments purportedly uttered by his sponsor (and father) Watson, was received into evidence. Resp’t Ex. 14; Tr. 306. Because the Government did not offer the purported threat in its case-in-chief, a disposition of this case does not require that a credibility issue on this statement be rendered, and it forms no basis of this recommended decision.

⁹⁴ Tom Watson testified that he owned fifty-eight and one half percent of the Respondent. Tr. 314.

⁹⁵ SOT 23; Gov’t Ex. 12; Tr. 320.

⁹⁶ Tr. 281, 291–92.

diversion issue in any pharmacy where he has been employed, and that he has never been subject to disciplinary action. Tr. 393, 424–25, 430, 443; *see also* SOF 23(b); Gov’t Ex. 12.

Wood testified to a relatively lengthy history of working on and off for the Watsons over the course of his nine years⁹⁷ as a pharmacist. When he was in school at the University of Arkansas for Medical Sciences, he completed a one-month pharmacy internship working for Chris W. Tr. 391, 478. After graduating in 2006, Wood worked as a pharmacist in several Watson-owned pharmacies, rotating between his Mayflower, Morrilton, and Perryville (the Respondent) pharmacies. Tr. 392–94, 453, 475.

Wood testified that in 2008 or 2009 he briefly moved to Utah to accept a pharmacist position there, but the adventure was short-lived, and he returned to Arkansas. Tr. 395. Upon his return, he resumed employment for Tom Watson as the PIC of his Morrilton Food and Drug pharmacy (Morrilton) for three years. Tr. 394–95. When Watson sold the Morrilton pharmacy to a rival chain, Wood spent three years with a pharmacy unaffiliated with the Watsons. Tr. 396. Wood explained that in December 2014 he made arrangements with Chris W to return to the Respondent on a part-time basis,⁹⁸ but that he did not report for work until the day after the pharmacy search warrant execution. Tr. 396, 398. Wood testified that although the final paperwork is still pending at the Pharmacy Board,⁹⁹ he is currently acting as the PIC at the Respondent. Tr. 398. According to Wood, the appropriate application was filed at the Pharmacy Board days prior to the hearing. Tr. 399, 443.

Wood opined that where a pharmacy is operating without an involved and active owner, diversion control responsibility “starts with the PIC.” Tr. 415. Wood testified that he believes that it would be difficult to discover a PIC engaging in unethical or illegal behavior unless the PIC “was doing it obviously in front of everyone that worked there.” *Id.* He stated that because the PIC is in charge of diversion control at a pharmacy, he doesn’t know a way to “safeguard” against such behavior except by having another employee (for

⁹⁷ Tr. 392.

⁹⁸ Wood testified that he only desired part-time employment at the Respondent because he wanted additional time to pursue a career in professional bass fishing. Tr. 397–98.

⁹⁹ Wood had previously been approved by the Arkansas Board as a PIC at Morrilton. Tr. 399. He testified that he had taken an examination when he was initially designated as a PIC. Tr. 475.

example, a pharmacy technician) also signing off on checking drugs in and conducting an inventory (a measure which he stated he would implement should the Respondent again dispense controlled substances). Tr. 416–18, 448. Wood testified has reviewed a written (unsigned) proposed controlled substance policy document (Proposed Policy) provided to him by Watson, and represented he would implement its provisions if the pharmacy gets its COR back. Tr. 417; Resp't Ex. 1. Wood described the Proposed Policy as an outline of policies and procedure, a "working document," and stated that he would recommend that all future PICs be required to review the policy with Watson and sign off that they had done so.¹⁰⁰ Tr. at 418. Wood proposed the implementation of diversion controls beyond the requirement of the already mandatory biennial inventory,¹⁰¹ such as a requirement that the PIC personally insure that all controlled substance inventory is checked in properly in the inventory database, and the maintenance of a "perpetual inventory" of controlled substances,¹⁰² and several other measures aimed at increased security and accountability. Tr. 415–19, 444.

Wood testified that electronic keypad door locks,¹⁰³ lockable roll-down windows, and a host of pharmacy security cameras¹⁰⁴ trained on the windows, doors, and cashiers supply additional layers of diversion control. Tr. 401, 419.¹⁰⁵ However, he stated that he does not believe anyone watches the tape in real time or reviews the tape regularly. Tr. 423–24. He did not know how long the loop of the tape was or how long the tape preserved the images before recording over itself. Tr. 423. In fact, Wood stated that he never had a circumstance in which to review any video monitor tape himself in any pharmacy where he has ever worked, and as far as he knows, no one ever

¹⁰⁰ However, in describing the framework created by the Proposed Policy, he also stated, "Common sense tells you what you need to be doing in this regard and what you don't need to be doing." Tr. 419.

¹⁰¹ Tr. 416–17.

¹⁰² Wood explained that the institution of a perpetual inventory would require pharmacy personnel to count the contents of stock controlled substance bottles whenever the bottle was nearing depletion and reconcile the bottle count inventory reflected in the system. Tr. 419.

¹⁰³ Wood conceded that the keypad lock combination remains the same and that he did not know whether it was changed after Chris W's arrest. Tr. 445.

¹⁰⁴ Presumably, this is the same closed-circuit system that Watson did not know how to access. Tr. 365–67.

¹⁰⁵ Photographs depicting the Respondent were admitted into evidence. Tr. 403; Resp't Exs. 2–11.

reviews the footage at the Respondent. Tr. 424.

Wood also explained the role of Arkansas's prescription monitoring program (PMP), in which pharmacies are required to submit a weekly report to the state to disclose what and how many controlled substances have been dispensed at the pharmacy that week.¹⁰⁶ Tr. 419–20. The database into which that information is incorporated then permits doctors and pharmacists to search for a particular patient and see that patient's prescription history to investigate whether a patient has been using multiple pharmacies or doctor-shopping. Tr. 420. Wood testified that he does not have a "magical number" of how often he checks the PMP when filling a prescription but that such a decision relies upon whether "something doesn't feel right" or if a patient shows up multiple times in a short period of time with scrips from different practitioners. Tr. 422–23.

Wood stated that he believes that as PIC, he could administer the Proposed Policy should the Respondent retain its COR. Tr. 430. He has been working at the Respondent since January 2015 and intends to remain and assume the duties as the PIC, but indicated that he deferred the submission of his Pharmacy Board paperwork until April due to lingering uncertainty as to the pharmacy's future. Tr. 470. Wood allowed that even at the time he accepted the offer to become the next PIC, he harbored concerns about what the future holds for the pharmacy. Tr. 471.

Wood testified that his efforts to allay his concerns extended to sending emails to the Pharmacy Board.¹⁰⁷ Tr. 472. However, an examination of the email exchange¹⁰⁸ between Wood and the Pharmacy Board reflects a level of urgency that exceeded the impression conveyed by Wood on the witness stand. In his initial email to the Board he explained:

We have not applied for a PIC status because of the fact that we're not sure what direction the store is going in. There's rumors

¹⁰⁶ Wood testified that software developed by McKesson and used by the Respondent automatically submits these dispensing reports to the state. Tr. at 420–21.

¹⁰⁷ As part of the Government's rebuttal case, it presented the testimony of John Kirtley, the Executive Director of the Pharmacy Board. Tr. at 509. Kirtley testified that he recalled the email exchange with Wood, and although he was not surprised that a prospective PIC would inquire about becoming a PIC in a recently-raided pharmacy, he did recall being surprised that Wood, who had already served as a PIC, was unfamiliar with the procedural aspects of becoming a PIC. Tr. 517–19.

¹⁰⁸ Gov't Ex. 71.

that it's up for sale and the fact that the owner, Tom Watson, will probably not get his DEA registration back . . . I really don't feel comfortable, right now, putting my name down as PIC of this place . . . I'm not even sure I'll be here in another month.

Gov't Ex. 71 at 3. A subsequent email sent by Wood reads:

[D]o I need to put my name down as PIC to make [the Respondent] compliant? I really don't want to associate my name with it right now, but I seem to be the only pharmacist they can get to work here for now. I seriously doubt I will be here much longer, however.

Id. at 2.

Wood also explained that the Respondent is located in an "extremely rural" area, and that the pharmacy serves a largely indigent population. Tr. 404. Wood described the Respondent's customer base as "extremely loyal", and he explained that customers rely upon pharmacists much as they would rely upon doctors. *Id.* Wood also stated that because of the small-town nature of the community, doctors and pharmacists have a unique relationship such that doctors "trust" and "utilize" pharmacists differently than in other, more cosmopolitan communities, and that the Respondent participates in state-authorized "disease state management," counsels patients, and administers immunizations.¹⁰⁹ Tr. 430. According to Wood, although there is another pharmacy in the county, the grocery store owned by Tom Watson in which the Respondent is located is the only grocery store located in the county. Tr. 404. Wood opined that without the Respondent present, the other pharmacy in the county would have a "monopoly" on business. Tr. 405.

Wood also testified about his recollections about his interactions with pharmacist Grant Goode, which diverge significantly from Goode's account. According to Wood, he met Grant Goode for the first time upon returning to work at the Respondent, and while the relationship between the two men was cordial enough at the outset, it culminated in a rather testy telephone exchange regarding Goode's continued employment at the pharmacy. Tr. 425. By Wood's account, he and Watson had come to the conclusion that there was insufficient business¹¹⁰ at the pharmacy to merit Goode's continued employment

¹⁰⁹ Wood admitted that these services do not involve the dispensing of controlled substances and thus are not dependent on the status of the Respondent's COR. Tr. 442.

¹¹⁰ Although Tracy Swaim testified that pharmacy business had grown by one-third (Tr. 262–63), Wood was apparently not aware of that growth. Tr. 435. He attributed the diminishment in business to the impact of the immediate suspension order. Tr. 438.

there.¹¹¹ Tr. 426. Wood stated that he communicated the substance of this discussion to Goode and suggested that the two of them share the weekly schedule, with Wood working full-time (three to four days per week) and Goode working part-time (two to three days per week).¹¹² Tr. 427. It was Wood's recollection that upon hearing this disagreeable news, Goode became irate, complained that the Watsons had been lying for years, and even marveled that Wood himself had not yet been indicted based on his experiences with Chris W at the Watsons' Mayflower pharmacy.¹¹³ Tr. 427–29. It is apparent from Wood's testimony that he was offended on behalf of the Watsons. Tr. 427, 429. In his words, it "struck me as kind of odd [that t]he guy was asking me to work for the Watsons, at the same time bashing them." Tr. 427. Interestingly, offended as Wood may have been at the implications of his own culpability and that of his employer, the conversation apparently did not result in any heightened level of suspicion on his part that diversion issues could be afoot at the pharmacy where he was working. Tr. 431–34.

Glenn Wood's testimony was problematic from a credibility standpoint. In fact, the Respondent's position regarding the security and integrity to future operations that will follow based on the appointment of Wood as the PIC were actually undermined by Wood's testimony. Although Wood testified that Goode raised issues regarding the pharmacy and even implied that Wood could have been indicted based on his time working with Chris W, no sense of professional responsibility as a pharmacist awakened in him even the slightest curiosity as to what Goode (a fellow pharmacist that he said he barely knew) was talking about. Tr. 427–29. When pressed on the issue, Wood countered that Goode had merely accused the Watsons of lying, not diversion,¹¹⁴ but in view of the fact that this conversation was occurring two-to-three weeks after the pharmacy search warrant execution, and revelations of misconduct, which, by Wood's own account, made him "sick," "mad," and "upset," this explanation strains credulity. Evaluating this conversation in the context of recent events, the Respondent had just been searched and served with a DEA immediate

suspension order and a former pharmacist who worked there just told him that the owners were liars and he was fortunate not to be laboring under an indictment himself. It is in this backdrop that, Wood (an experienced pharmacist) now claims that he never connected Goode's statements to any possible pharmacy misconduct. To put it mildly, this is implausible and damages this witness's credibility. The fact that he did not pursue the matter further with Goode speaks volumes about his level of professional vigilance, and the fact that he testified that he never realized that Goode was referring to pharmacy misconduct is equally telling on the subject of this witness's credibility.

The divergence between Wood's recollection of this phone conversation and the recollection of Grant Goode is striking. Goode was clear that Wood told him that all of his hours at the pharmacy were being taken by Wood, and that it was Wood's understanding that Watson would have told him so already. Tr. 291. Wood's version of the conversation is internally inconsistent and illogical. In Wood's account, when Goode reached out to him to pin down the hours he would be working, this is what occurred:

So, when I returned [Goode's] call that evening, I told him, I said, Grant, I hate to be the one to tell you this, you know, I hate it because I don't want to put anybody out of work, I was like there's not room for both of us, bud, and I need full-time, but what I'd like to happen, I don't want to work six days a week. I only want to work three to four days a week. And I suggested to Grant that evening, I said what I'd like to happen is if you could work at [the Respondent] two or three days and then find another pharmacy that will let you work a couple days there. You know, that would be great.

Tr. 426–47; *see also* Tr. 435–37. Wood's testimony about this phone conversation strengthens Goode's account and weakens his own. If Goode was calling to find out which days he was working, it is reasonable to assume he knew already that he was not working all days. If Wood was really only telling Goode which days he would be working, it is illogical that he would "hate to be the one to tell [him] . . . because [he does not] want to put anyone out of work." Tr. 426–27. It makes even less sense that Wood, even by his own recollection, would remember telling Goode that "there's just not room for both of us, bud, and I need full-time . . ." Tr. 427. Goode's testimony that he was essentially informed of his own termination during this phone call is rendered light-years more credible by Wood's self-admitted

reluctance to tell him about Watson's decision, and his explanation to Goode that his need for full-time pharmacist work obviated the need to have Goode employed there at all. In short, Wood's account is less credible than Goode's, and Wood's version of this interaction significantly diminishes his credibility.

Wood testified that in the approximately ten years that he has worked "on and off" for pharmacies owned by Tom Watson, including the one-month internship under Chris W and the two years he worked with Chris W at the Mayflower pharmacy, he never saw Chris W engage in any strange, suspicious, or illegal behavior. Tr. 406, 478. He stated that when he heard about Chris W's arrest, he assumed that the authorities "got [Chris W] for putting refills on blood pressure meds and diabetes meds," which he describes as "about the only thing that [he] ever saw [Chris W] do" and which he had seen other pharmacists do as well. Tr. 406. Wood added that when working as a relief pharmacist at the Respondent, none of the pharmacy technicians ever complained to him about missing controlled substances or issues with Chris W, nor did he ever notice missing inventory himself. Tr. 447. Wood testified that upon learning of the allegations against Chris W, he was shocked, sickened, in disbelief, sad, and angry with Chris W. Tr. 406. He stated that this was not the Chris W that he knew from working with him. Tr. 407.

On the issue of Wood and Chris W working together, Wood's testimony was also confusing. At one point in his testimony, Wood said he "can't recall a time when [he and Chris W] ever worked side by side" as pharmacists during the same shift. Tr. 451. After some significant equivocation, Wood answered the direct question of whether they worked together this way:

Just on occasion. You know, vacation issues or sickness issues if me or . . . my other part-time pharmacist, again I can't recall an instance, but I'm almost certain that there probably was over the course of three years in which Chris had come over to relieve us.

Tr. 452. Wood then described how, because Mondays or the first day of each month could be high traffic times, that pharmacists "would often double up," but that he could not recall doubling up with Chris W at Morrilton. Tr. 453. Since Morrilton was not predicated in the question, it was only upon follow-up that Wood finally admitted that he and Chris W worked together at the Watson's Mayflower pharmacy once a week for two years. Tr. 453–54; *see also* Tr. 479. This equivocation made even less sense in light of the fact that Wood

¹¹¹ Tr. 262–63.

¹¹² According to Wood, Goode wanted to work six days per week at the Respondent. Tr. 436.

¹¹³ Goode's statements as reported by Wood were received for the limited purpose of demonstrating Goode's state of mind during the conversation, not for the truth of the matters asserted. Tr. 428.

¹¹⁴ Tr. 434.

had testified earlier to working together regularly with Chris W. Tr. 392. The relevance of Wood's testimony on the point is less about how often the two pharmacists were dispensing in the same room that it is about how reluctant Wood was to confirm it. Wood's equivocation detracted from the credibility of his testimony.

In a similar vein, at one point in his testimony, Wood indicated that he did not know Eric Horton "personally." Tr. 465. Eventually Wood allowed that he "know[s] who Eric Horton is" because he would encounter him at times with Chris W. Tr. 466. Then Wood indicated that he attended "some birthday parties" for Chris W's daughter where Horton was present, and that he sometimes saw Horton "riding around in the truck." Tr. 466–67. When pressed about what "riding around in the truck" means, Wood clarified that he would see him in the Watsons' grocery store (which is not really in any truck), and that it was not really that he did not know Horton, but that he did not know him *well*. Tr. 466–69. Equivocation on this point did not enhance Wood's credibility.

Wood also testified about a separate business relationship he has maintained with Chris W in a corporation they started together and named Matlon, Incorporated (Matlon).¹¹⁵ Matlon produced and distributed a product known as "Redneck Remedy." Tr. 407. Wood stated that shortly after graduating from pharmacy school, he developed a formula for sunburn cream and began compounding it for sale. *Id.* According to Wood, Redneck Remedy was initially sold only to frequent pharmacy customers, friends, and family, but that the success of the product grew so steadily that after two years "it got so big it went from my third bedroom in my home to my garage. . . ." Tr. 408. Wood recounted how he felt that demand for the product had swelled sufficiently that he needed a partner, and enlisted Chris W to supply the business acumen for the enterprise. *Id.*

Redneck Remedy was bottled, labeled,¹¹⁶ and shelved for retail sale at the Respondent and another (non-Watson) pharmacy. Tr. 440–41. Wood maintained that he had scant contact with Chris W throughout the course of their Matlon partnership, and the two mostly communicated by text message and phone calls, especially in recent years. Tr. 450. Wood testified that the

corporation never hired employees, "had no one on the payroll," but occasionally utilized the services of independent contractors (generally Wood's friends)¹¹⁷ to help mix the product and market it at trade shows. Tr. 411–12, 464–65. Chris W procured supplies for the product from Watson family pharmacies. Tr. 463–64.

Wood stated that "the product worked" and that the business was "somewhat successful" for a few years, but instead of investing time and money, he just let the business go. Tr. 408–09. In his words, "[i]t was one of those deals that it grew too fast almost and then for whatever reason from there it just—I lost interest in it, got burned out, and—." Tr. 408. Wood testified that in the past two years, the business has been "pretty much defunct," for essentially no other reason than Wood's interest in professional bass fishing. Tr. 408–10, 454–55. According to his testimony, he has not actively supplied bottles of Redneck Remedy for the past year-and-a-half to two years.¹¹⁸ Tr. 412. In fact, he testified that he removed the remaining bottles off the shelf at the Respondent when he began working there again in January 2015. Tr. 440–41, 461–63. Thus, the three remaining jars of the product were removed to shelves in the restricted pharmacy area where potential customers or anyone else outside Respondent's pharmacy staff could not see it. This was done shortly after Wood returned to the pharmacy (the day after the pharmacy search warrant execution), and just after the diversion allegations surrounding Chris W came to light. Tr. 441–42, 461–63. Wood said the remaining cream is "off of the counter at the point of sale in the pharmacy, and it's basically just put back out of sight, out of mind." Tr. 441. Wood insisted that Matlon is currently worth nothing and still continues to exist as a hollow legal entity merely because he and Chris W never got around to dissolving it. Tr. 454–55.

Much of Wood's testimony regarding Matlon makes no sense. The Redneck Remedy Web site remains active, and charges to maintain it continue to accrue. Tr. 455–57; Gov't Ex. 70. Upon learning that Matlon was in arrears in its payments for the Web site account, Wood informed the hosting company

that he should take the matter up with Chris W, inasmuch as he is the majority shareholder and the partner charged with responsibility for handling bills. Tr. 457. If the business was truly bereft of any potential benefit and awaited only its paperwork *coup de grace*, it is difficult to imagine why the two partners would suffer the continued expense of a Web site. At one point in his testimony, Wood said that the enterprise failed only because he became distracted with bass fishing and other interests,¹¹⁹ and at another point, when pressed about the timing of the venture's demise, Wood declared that "the business began dropping off way before last year." Tr. 413. Similarly, Wood testified that he only wanted to return to pharmacy work part-time because of his bass fishing and family responsibilities, but testified that he told Grant Goode that there was no room for him at the Respondent because "there's just not room for both of us, bud, and I need full time. . . ." Tr. 427.

To the extent that Matlon served no purpose beyond a (successful) profit venture, it is difficult to reconcile the partners' decision to kill it so unceremoniously. Wood was unable to supply an answer that made any sense. Tr. 409–10. Wood stated that he was not in a position to be able to quit his full-time position as a pharmacist to devote to the business and that his priorities shifted from marketing the business to starting his professional fishing career and raising his family. Tr. 409–11. Despite describing himself as the corporation's hands-on, "go-to guy" (compared to Chris W, whom he described as the "silent partner"), Wood was unable to explain how or why the corporation went from successful to floundering. Tr. 408. In addressing the question of what how Matlon's outstanding financial issues would be handled, Wood was only able to unconvincingly offer that he had "stepped away" from the responsibility of managing the corporation last year and had informed Chris W of that fact. Tr. 458–59. Inconsistently, Wood conceded that he was the last person to file corporate income taxes on the entity in 2013 and anticipates doing so for 2014. Tr. 459, 465. Confounding matters further in this regard, Wood's email auto signature still imbues him with the moniker "President and CEO of Matlon, Inc." Tr. 460–61. Wood offered a variety of verbal shrug, citing "[i]gnorance on [his] part." Tr. 461. Wood indicated that he did not know why he continued to sign all his emails as the president and CEO of Matlon, and once again stressed

¹¹⁵ Wood testified that the name is a combination of the letters starting the first names of their respective daughters. Tr. 409.

¹¹⁶ Tr. 414.

¹¹⁷ Wood testified that he was unaware that Chris W's friend, Eric Horton, had been enlisted to pick up supplies for the enterprise. Tr. 464, 469.

¹¹⁸ Wood likewise testified that he anticipated that the company made \$600 in sales in 2014, and most of that was from friends and family in the early part of the year. Tr. 413. Assuming, as Wood testified, that each bottle of Redneck Remedy has a value of \$8 (Tr. 480), Matlon sold approximately 75 bottles of the cream during this period of alleged decline.

¹¹⁹ Tr. 408–09, 454–55.

his self-described status as a poor businessman (a characterization which is belied by the fact that Redneck Remedy made money for Matlon until company operations were abruptly abandoned). Tr. 461–63. Matlon’s Web site still lists Wood at its president and CEO. SOT 12(g); Gov’t Ex. 70.

Although it would be naïve to conclude that Matlon is the simply the failed business enterprise described by Wood, teasing out its intricacies is likewise a task unrequired to resolve the principal issues in this case. Matlon was a business venture that sold a product whose overhead and production costs were amorphous, to say the least. The materials were purchased and or otherwise obtained by Chris W and compounded by Wood. Likewise, its manpower largely came from non-employee friends and associates whose compensation was almost certainly variable and unclear. The business was not driven out of business by lack of success so much as it was suppressed by its owners at about the time that law enforcement scrutiny focused on Chris W and the Respondent. Inexplicably, by Wood’s account, the last three bottles of Redneck Remedy were removed from retail shelves where they could be sold, and secreted on a shelf within the enclosed pharmacy spaces away from potential customers. Tr. 462. While Matlon was almost certainly structured (and abandoned) in a manner that belies the simplistic explanations tendered by Wood, it is not necessary here to draw any conclusions in this regard. The principal relevance of Matlon in these proceedings is that Wood’s implausible testimony regarding its operations detracts considerably from the credibility of his testimony.

Suffice it to say that Wood’s presentation was sufficiently punctuated with inconsistencies, equivocations, and implausibility that it cannot be fully credited in this recommended decision. Thus, his assertions that he had never had any reason to believe that Chris W demonstrated addiction signs or suspicious activity,¹²⁰ that no staff member ever brought diversion concerns to his attention,¹²¹ or that he had never noticed controlled stock missing,¹²² are of limited value here.

Respondent’s majority shareholder, Tom Watson, testified that he is and has been a licensed pharmacist for about forty years,¹²³ that he received his pharmacy degree from the University of

Oklahoma in 1974, and after working as a staff pharmacist in a few establishments, opened a grocery store/pharmacy with his brother-in-law, Duane Goode,¹²⁴ in West Conway, Arkansas. Tr. 315–16. Watson and his father-in-law subsequently built the Respondent in Perryville, operating as part of a grocery store (Big Star Perryville), and he later created two additional stores in the nearby rural communities of Morrilton and Mayflower. Tr. 318. He stated that he has divested himself of all pharmacies with the exception of the Respondent in the Big Star Perryville grocery store. Tr. 321.

Watson testified that he retired four years ago, at age sixty-two, and has encountered Lyme disease and some back issues. Tr. 320–21. According to Watson, Big Star Perryville was destroyed by a fire about three years prior to the hearing and the pharmacy was victimized by a burglary while the store was located in a temporary location. Tr. 323.

Watson explained that after working as a pharmacist at a rival pharmacy chain, and then his (now closed) Mayflower store, his son Chris W came to work at the Respondent, and “inherited” the job of pharmacy PIC “when Tracy [Swaim] quit.” Tr. 324–25, 375–76. Watson also testified that his son Chris W also served as the vice president, controller, and part owner¹²⁵ of the business. Tr. 318, 377–78. When asked about Tracy Swaim’s account of why he stepped down as the PIC, the elder Watson had this to say:

Yeah. I—I don’t—I remember some of what [Swaim] talked about but I don’t remember all of what he talked about, you know. And

¹²⁴ Duane Goode is Grant Goode’s father. Tr. 316.

¹²⁵ Although this testimony is consonant with a stipulation of fact regarding Chris W’s ownership that was reached by the parties (SOF 24; Tr. 389), a post-hearing motion by the Respondent sought to “correct the record” by the addition of an affidavit by Tom Watson’s wife (Teresa Watson) that challenges that assertion. ALJ Ex. 21. The Government validly opposed the Respondent’s post-hearing motion to include Mrs. Watson’s affidavit. ALJ Ex. 22. Although the Respondent’s motion to include the affidavit was styled as a “Motion to Correct the Record,” it could do no such thing, and was granted only to the extent that Mrs. Watson’s affidavit is now included in the record, and considered in accordance with 21 CFR 1316.58(b) (“Affidavits admitted into evidence shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to statements made therein.”). ALJ Ex. 23. Inasmuch as the affidavit is inconsistent with the prior stipulation of the parties, and must be considered in light of the absence of cross-examination, it has been afforded little weight in this recommended decision. Additionally, as explained *infra*, under current Agency precedent, Chris W’s status as a part owner of the Respondent is of negligible significance to a resolution of the present case.

I talked to Chris [W] about some things, too, so I was hoping everything was, I was hoping everything was in good shape.

Tr. 326. Watson emphasized that he held Swaim in high regard, stating that the two have been together for a long time and still are. Tr. 333.

Watson was clear that he was “shocked” to learn that his son had an addiction problem, and opined that the younger Watson’s chronically bloodshot eyes were the result of a longstanding medical condition. Tr. 236. He offered that during the 2013–2014 timeframe, notwithstanding the fact that he and his son lived “a little over a quarter of a mile” from each other, they only saw each other once every two weeks or so, because their “paths didn’t cross.” Tr. 327–28.

Watson’s position at the hearing regarding the steps he took based on what he was believed and what he was told was less than clear. On the one hand, he indicated that had he learned that his son, a pharmacist (and later the PIC) at his store, had indications of an addiction problem or was engaged in suspicious behavior, he would have referred his son for treatment and advised the Pharmacy Board. Tr. 328–29, 331. But Watson also testified that he would be unwilling to “fire somebody ‘cause they tell me so and so is doing this or that. . . .” Tr. 332. In Watson’s words:

It’s hard. I mean, you know, ‘cause I’ve talked to [Chris W], well, several times, and he’d usually blame it on something else or, you know, this or that, and I didn’t know how much was gone.

Tr. 332. Thus, Watson testified that he would involve the Pharmacy Board and put his son into treatment if he learned that addiction and/or diversion were occurring,¹²⁶ but then conceded that he actually had been so informed and was dissuaded from any action by conversations with his son, who, even by his own account, did no more than “usually blame it on something else,” or “this or that.” *Id.* Watson even acknowledged that he “didn’t do enough [and] didn’t do it fast enough,” but asserted that all would have been corrected with a scheduled audit that was scheduled to occur a week after the pharmacy search warrant execution,¹²⁷ and that an inventory was essentially the only real option he had based on what Swaim told him. Tr. 335–36. However, in view of the fact that he (even still) holds Tracy Swaim in high esteem, and did so at the time Swaim raised the alarm, it is difficult to

¹²⁶ Tr. 328.

¹²⁷ Tr. 345–46.

¹²⁰ Tr. 414.

¹²¹ Tr. 447–48.

¹²² Tr. 447.

¹²³ Tr. 352.

understand how the addition of an inventory to confirm the warning tendered by a trusted employee would have altered his reluctance to act. Stated differently, he trusted Swaim and Swaim warned him; he had every reason, based on his decades of experience with Swaim to rely on what he related to him; an inventory would have added nothing to the equation. To suggest that an inventory that never occurred would have been the final, deciding factor in motivating him to act is simply not persuasive and undermines his credibility.

To add to the confusion, at another point in his testimony, Watson testified that he has actually encountered employees using and diverting controlled substances, but has never reported any misconduct to the Pharmacy Board in his life. Tr. 344–45. It is difficult to place credence in his testimony that he would refer all diversion issues to the Pharmacy Board when he also says that he has actually seen diversion issues in his career and has never referred anything to the Pharmacy Board. The two points seem irreconcilable.

Watson's testimony regarding security measures that have been in place at the pharmacy was also somewhat disquieting. He admitted that the entire staff had access to the controlled substance ordering password, and acknowledged that although his pharmacy had security cameras, he did not know how to access any of the footage to review it. Tr. 365–67.

Watson also offered a document that purportedly sets forth a new written set of policies and procedures that he intends to implement at the Respondent to address some of the security shortcomings and reduce the risk of future diversion (Proposed Policy).¹²⁸ Tr. 336–39, 341; Resp't Ex. 1. Regrettably, the document was unsigned,¹²⁹ and although he testified that the Proposed Policy had been circulated to two pharmacy employees and his prospective PIC,¹³⁰ it was clear from Watson's testimony that he did not know who drafted the document and was not too familiar with its substantive contents. Tr. 337–38, 368–71. All in all, the Proposed Policy did not add much to the discussion of the Respondent's future.

In discussing his nephew, Grant Goode, Watson initially was unequivocal in his denial that Goode had raised any concerns about the

pharmacy or Chris W, but subsequently retreated somewhat from that position, indicating that he had been ill from Lyme Disease, slipped in the bathtub, had to take his granddaughter to the doctor, and eventually allowed that if there was such a warning from Goode, that he simply did not remember it. Tr. 348–50. In an astonishingly telling statement, Watson related the distaste with which he viewed Goode's decision to alert the authorities without sufficiently vetting his concerns through Watson family first. In Watson's own words:

You know—family is family. You know, if you've got a problem go see them about it, and talk about the problem. You don't know you got a problem until you at least talk about it. And you know, don't start with the state board, don't start with the DEA and all that. Start by calling your uncle or whatever or tell your mom and have her talk to your uncle if that—you know. But get it there where you can get it in front of you instead of, you know. . . . Be sure you know what you're talking about before you start that stuff, I mean.

Tr. 350–51.

Watson testified that Pharm. Tech. June Gilbert has been his friend and employee for over thirty-three years,¹³¹ and has been with him since the first day he opened the Respondent. Tr. 347. Even in the face of the (credible) testimony of his trusted employee, Tracy Swaim, that Pharm. Tech. Gilbert's direct warning to Watson (in Swaim's presence) that Chris W was "giving away" medication,¹³² was the tipping point that precipitated his resignation, Watson adamantly maintained that Pharm. Tech. Gilbert never alerted him to problems at the pharmacy,¹³³ and that he was not aware of any complaints from those who worked with Chris W at his (former) pharmacy in Mayflower. Tr. 373–74.

Watson's consistent point of view throughout the proceedings was that the PIC is the focal point of diversion control in any pharmacy, and that diversion occurring by the hand of the PIC is a difficult phenomenon to address. Tr. 332, 336. When pressed on his perception of his own responsibility, the elder Watson steadfastly maintained that he is not accountable for the actions of his PIC/son, Chris W. Tr. 354–56. Watson insisted that the blame was not on the Respondent or its owner, but

rather exclusively on his son. Tr. 355. The only possible responsibility Watson was willing to acknowledge (albeit grudgingly) was not replacing his son as the PIC earlier. *Id.* Specifically, on the issue of Chris W's wrongful dispensing, Watson declared that "[w]hoever filled is responsible for those prescriptions. I didn't fill them."¹³⁴ and regarding the failure to file a DEA-106 regarding medications that were taken from the pharmacy, Watson said "[t]hat should have been taken care of by the [PIC] when they [sic] found out they were missing." Tr. 357.

It was clear from the tenor and text of his testimony that Watson is strongly possessed of the view that his authority to delegate extends not only to authority, but also to responsibility. Watson explained it in this unequivocal manner:

That's the reason you delegate jobs to people; have somebody that [sic] is responsible. If I had been the pharmacist-in-control [sic] I would have taken care of that myself. I wish now I had of been [sic]. I'll admit that mistake.

Tr. 358. When asked about the scope of his theft reporting responsibilities as the pharmacy owner, Watson tellingly put it this way:

Well, in the long run, yeah, that's my responsibility, but it's really the responsibility of the store manager, [PIC], and all that. I try to delegate authority as much as I can because I can't be there every day.

Tr. 362.

Tom Watson's testimony was certainly not without its believable aspects. That said, even apart from the obvious reality that Watson has the most at stake at the hearing, there were internal inconsistencies, inconsistencies with other credible evidence, and implausible aspects that preclude his version of events from being fully credited in this recommended decision. The biographical information Watson supplied during his testimony as well as his subjective estimation (contrary as it is to Agency precedent) that delegation of authority can yield immunity from responsibility, are credible. However, his dual assertions that he was never warned of pharmacy problems by his nephew, Grant Goode, is compromised by his alternate position that he just may not remember all of Goode's warnings because he fell in a bathtub and has a history of once contracting Lyme disease. Tr. 348–50. The veracity of Watson's account is even further diminished by his assertion that he could only act upon the concerns expressed by his trusted, long-time PIC

¹²⁸ Gov't Ex. 1.

¹²⁹ Watson offered to sign the document on the witness stand. Tr. 341.

¹³⁰ Tr. 338–39.

¹³¹ However strong he felt the bonds of his friendship were with his long-time employee Pharm. Tech. Gilbert, they apparently did not inhibit him from blaming her to Grant Goode for the diversion being perpetrated by his son, Chris W. Tr. 283.

¹³² Tr. 256–57.

¹³³ Tr. 347.

¹³⁴ Tr. 356.

Tracy Swaim once an inventory (that never occurred) had corroborated it. Tr. 335–36. Similarly, Watson’s assertion that his long-time pharmacy technician and friend June Gilbert never raised pharmacy concerns with him is belied by credible testimony of Swaim that he quit when he overheard Pharm. Tech. Gilbert telling Watson that his son was giving away pills. Tr. 256–57.

Likewise, Watson’s position that if he had received information regarding addiction and diversion he would have brought in the Pharmacy Board and sought treatment for Chris W is belied by his subsequent assertions that although he has encountered diversion over the course of his career, he has never made such a report to the Pharmacy Board. Tr. 328, 344–45.

Even beyond the bathtub and Lyme disease issues, Watson’s assertion that his pharmacist/nephew Grant Goode never brought concerns about his son’s actions to his attention is simply not credible. Tr. 348–50. Although Watson expressed exasperation over his nephew’s decision to alert the authorities before sufficiently exhausting attempts to resolve issues through the intercession of family members, he raised no issue that impacted on Grant Goode’s credibility or that would supply a motive to fabricate misconduct.

After Watson testified, the Government presented (in its rebuttal case) the testimony of Steve Goode (Goode.1),¹³⁵ a former employee and business partner of Tom Watson. Tr. 485. Goode.1 testified that he began working for Tom Watson in 1993 in the capacity of overall store manager for Big Star Perryville. Tr. 486. He worked in that position for approximately six years, and then also assumed management responsibilities over Watson’s new Mayflower pharmacy/grocery store for the next year and a half. *Id.* Goode.1 testified that he left Watson’s employ for a year and a half, but in 2001 rejoined him as a business partner. *Id.* Goode.1 explained that over the course of their ten-year partnership, in addition to Big Star Perryville and Mayflower, the two men bought several grocery stores, all but one of which included a pharmacy. Tr. 486–87.

Goode.1 stated that his role in the partnership was to oversee the grocery side of the business, and that he was responsible for inventory, invoicing, sales, and purchases, and had access to the bank accounts in all of the stores. Tr. 487. According to Goode.1, although his

responsibilities did not include the management of the pharmacy aspects of the businesses, a unified ordering, sales, and inventory reporting system¹³⁶ linked to all store cash registers gave him access to all sales, billing, ordering, and inventory figures, including transactions in the pharmacies. Tr. 487–89. In 2009, Goode.1 had noticed that the Mayflower pharmacy was paying three full-time pharmacists, one of whom was Chris W, who had eased his actual hours into part-time work (at a full-time salary). Tr. 494. When Goode.1 raised the issue that this salary output was not sustainable, Chris W told him that he would “make it work” and that Goode.1 should “take care of grocery.” Tr. 494.

Goode.1 recounted that overall the business partnership enterprise had been “pretty successful” in the 2000s, but during the summer of 2010 he became aware that a new store the two men had opened in Russellville was struggling financially. During this period, Goode.1 and Watson would generally see each other about twice a week, but Goode.1 was sufficiently concerned about the Russellville operation and some other issues that he made arrangements to see Watson at his house. Tr. 489–90. Among other things discussed at the meeting, Goode.1 testified that he told the elder Watson that “all of a sudden” there was no money in the Mayflower store bank accounts, and that when he examined the records, pharmacy purchases were up, but pharmacy sales were “flat.” Tr. 490. Watson, whose son Chris W was the Mayflower PIC, told Goode.1 that he would look at the issue and “take care of it.” Tr. 490–91. Goode.1 testified that until the summer of 2010, he had not really paid a lot of attention to pharmacy numbers at the Mayflower store because his primary focus was always the grocery end of the business, but that he turned his attention in that direction as part of his efforts to ascertain why two stores, Mayflower and Russellville, were underperforming. Tr. 494–95. It was his conclusion that they had merely underestimated demand at Russellville, but the issue at Mayflower was different; pharmacy

sales were level, but the pharmacy was buying more drugs.¹³⁷

The upshot of Goode.1’s meeting with Watson was that the men agreed to meet with Chris W, and did so two weeks later. Tr. 491–92. However, according to Goode.1, his takeaway from the meeting was that “it was evident that nothing was going to change.” *Id.* Goode.1 was told to mind the grocery side of the business and that Chris W would take care of the pharmacy department. Tr. 493–93. Goode.1 stated that the conversation devolved into a discussion focused on the personal relationship between Goode.1 and the Watsons, and he was told that since because Goode.1 was permitted to use Watson land for hunting and a Watson truck for hauling, that he should mind the grocery side of the house and let Chris W manage the pharmacy end. Tr. 493. Goode.1 testified that Chris W (who was doing most of the talking) did not supply any business-related reason for the drug-sales versus drug-ordering anomaly at the Mayflower pharmacy. Tr. 493–95.

Goode.1 stated that after the Mayflower store was sold to a large pharmacy chain,¹³⁸ Chris W began to work at some hours at the Respondent at Big Star Perryville. Tr. 495. Goode.1 testified that in late 2012, while he and his wife were on vacation, he received a call from a mid-level multi-store department manager¹³⁹ (T.G.), who told him that Chris W had given a former Mayflower pharmacy technician (C.J.D.) access to the Respondent pharmacy at a time when the Respondent was closed. Tr. 496–99. T.G. told Goode.1 that while the pharmacy was closed, C.J.D., using the keypad access code to enter the restricted pharmacy area, prepared and dispensed medications to her friends and family. Although Goode.1 believes that entries were made in the store computer to reflect the distribution of the drugs, none of the transactions were rung up on any store cash registers.¹⁴⁰ Tr. 498. Goode.1 testified that he met with Watson about the situation and warned him that if he didn’t “get a handle” on Chris W, the business would encounter the same problem as the Mayflower pharmacy did. Tr. 496. According to Goode.1, Watson said

¹³⁷ Goode.1 testified that he had heard rumors of controlled substance discrepancies at the Mayflower pharmacy, but as he was not a pharmacist, he could not verify them. Tr. at 502–03.

¹³⁸ Goode.1 testified that his share of the sale price (from his 20 percent ownership interest) totaled approximately \$90,000. Tr. at 502.

¹³⁹ Goode.1 testified that the manager, T.G., supervised bakery and deli operation. Tr. 500.

¹⁴⁰ Goode.1 did not know whether the prescriptions prepared by the former employee were controlled substances. *Id.*

¹³⁵ Steve Goode has no relation to Grant Goode, and pronounces his (identically-spelled) name differently. Tr. 484.

¹³⁶ Goode.1 testified that the system was provided by the grocery wholesaler, Associated Wholesale Grocers (AWG). Tr. 487–88. The AWG system accommodated and tracked the ordering of pharmaceuticals through McKesson, who at the time was the Respondent’s pharmacy supplier. Tr. 488. Goode.1 explained that a unified system allowed an overview of all Big Star Perryville transactions such that he could conduct an examination to determine which aspects of the business were doing well or poorly. Tr. 489.

“he’d take care of it” but nothing happened. *Id.*

Goode.1 reckoned that Tom Watson “was the only one that had any influence over [Chris W],” and that by bringing the issues to Watson’s attention, he expected him to “get involved in the business” and acknowledge that there was a problem. Tr. 504. His partner’s aspirations notwithstanding, Watson made no discernible effort to intervene. *Id.* Goode.1 and Watson sold the Mayflower and Morrilton stores and dissolved their partnership in 2012 shortly after the C.J.D. incident came to light. Tr. 486.

Goode.1 presented testimony that was sufficiently even, detailed, plausible, and internally consistent to be afforded full credibility in these proceedings. Goode.1 readily acknowledged that dissolution of their partnership was “not totally amicable” because the two men still harbor some dispute about the financial aspects of the dissolution. Tr. 505. Still, there is nothing about the outcome of these proceedings that would enhance or detract from Goode.1’s status in their unrelated monetary dispute, and there was no indication of malice or bias in the tenor or his words or demeanor. Watson’s former business partner provided credible testimony.

Any additional facts required for a resolution of this case are set forth in the Analysis portion of this recommended decision.

The Analysis

Under 21 U.S.C. 824(a)(4), the Agency may revoke the COR of a registrant if the registrant “has committed such acts as would render [its] registration . . . inconsistent with the public interest.” 21 U.S.C. 824(a)(4) (2012). The following factors have been provided by Congress in determining “the public interest”:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The [registrant’s] experience in dispensing, or conducting research with respect to controlled substances.

(3) The [registrant’s] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f) (2012).

“[T]hese factors are considered in the disjunctive.” *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). Any one or a combination of factors may be relied

upon, and when exercising authority as an impartial adjudicator, the Agency may properly give each factor whatever weight it deems appropriate in determining whether a registrant’s registration should be revoked. *Id.*; *David H. Gillis, M.D.*, 58 FR 37507, 37508 (1993); see *Morall v. DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005); *Joy’s Ideas*, 70 FR 33195, 33197 (2005); *Henry J. Schwarz, Jr., M.D.*, 54 FR 16422, 16424 (1989). Moreover, the Agency is “not required to make findings as to all of the factors,” *Hoxie v. DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *Morall*, 412 F.3d at 173, and is not required to discuss consideration of each factor in equal detail, or even every factor in any given level of detail. *Trawick v. DEA*, 861 F.2d 72, 76 (4th Cir. 1988) (holding that the Administrator’s obligation to explain the decision rationale may be satisfied even if only minimal consideration is given to the relevant factors and that remand is required only when it is unclear whether the relevant factors were considered at all). The balancing of the public interest factors “is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest. . . .” *Jayam Krishna-Iyer*, 74 FR 459, 462 (2009).

In the adjudication of a revocation of a DEA COR, the DEA has the burden of proving that the requirements for continued registration are not satisfied. 21 CFR 1301.44(d) (2015). Where the Government has met this burden by making a *prima facie* case for revocation of a registrant’s DEA COR, the burden of production then shifts to the registrant to show that, given the totality of the facts and circumstances in the record, revoking the registrant’s registration would not be appropriate. *Med. Shoppe-Jonesborough*, 73 FR 364, 387 (2008); *Samuel S. Jackson, D.D.S.*, 72 FR 23848, 23853 (2007). Further, “to rebut the Government’s *prima facie* case, [the Respondent] is required not only to accept responsibility for [the established] misconduct, but also to demonstrate what corrective measures [have been] undertaken to prevent the reoccurrence of similar acts.” *Jeri Hassman, M.D.*, 75 FR 8194, 8236 (2010); accord *Krishna-Iyer*, 74 FR at 464 & n.8. In determining whether and to what extent a sanction is appropriate, consideration must be given to both the egregiousness of the offense established by the Government’s evidence and the Agency’s interest in both specific and

general deterrence. *David A. Ruben, M.D.*, 78 FR 38363, 38364, 38385 (2013).

Normal hardships to the registrant, and even the surrounding community, which are attendant upon the revocation of a registration, are not a relevant consideration. *Linda Sue Cheek, M.D.*, 76 FR 66972, 66972–73 (2011); *Gregory D. Owens, D.D.S.*, 74 FR 36751, 36757 (2009). The Agency’s conclusion that past performance is the best predictor of future performance has been sustained on review in the courts, *Alra Labs., Inc. v. DEA*, 54 F.3d 450, 452 (7th Cir. 1995), as has the Agency’s consistent policy of strongly weighing whether a registrant who has committed acts inconsistent with the public interest has accepted responsibility and demonstrated that he or she will not engage in future misconduct, *Hoxie*, 419 F.3d at 483; see also *Ronald Lynch, M.D.*, 75 FR 78745, 78754 (2010) (holding that the Respondent’s attempts to minimize misconduct undermined acceptance of responsibility); *George Mathew, M.D.*, 75 FR 66138, 66140, 66145, 66148 (2010); *George C. Aycock, M.D.*, 74 FR 17529, 17543 (2009); *Steven M. Abbadessa, D.O.*, 74 FR 10077, 10078 (2009); *Krishna-Iyer*, 74 FR at 463; *Med. Shoppe-Jonesborough*, 73 FR at 387.

[Omitted Material]

Factors 1 and 3: The Recommendation of the Appropriate State Licensing Board or Professional Disciplinary Authority Conviction Record Under Federal or State Laws Relating to the Manufacture, Distribution, or Dispensing of Controlled Substances

Consideration of the evidence of record under Factors 1 and 3 does not support or undermine the sanction sought by the Government in this case. Under Factor 1, the recommendation of state medical licensing authorities is an important but not dispositive factor in determining whether maintaining a DEA COR is consistent with the public interest. *Patrick W. Stodola, M.D.*, 74 FR 20727, 20730 (2009); *Krishna-Iyer*, 74 FR at 461. It is beyond argument that beyond the absence of any evidence that Arkansas state officials have taken any action (or have even considered the matter), the present record contains no recommendation of any kind from any licensing or disciplinary authorities in Arkansas.

Regarding the third factor (convictions relating to the manufacture, distribution, or dispensing of controlled substances), the record in this case does not contain evidence that the Respondent, its owner(s), or any pharmacist or key employee of the

pharmacy has been convicted¹⁴¹ of a crime related to any of the controlled substance activities designated in the CSA. The standard of proof in a criminal case is more stringent than the standard required at an administrative proceeding, and the elements of both federal and state crimes relating to controlled substances are not always coextensive with conduct that is relevant to a determination of whether maintaining registration is within the public interest. Still, where present, evidence that a registrant has been convicted of crimes related to controlled substances is a factor to be evaluated in reaching a determination as to whether the registrant should continue to be entrusted with a DEA certificate. The probative value of an absence of any evidence of criminal prosecution is somewhat diminished by the myriad of considerations that are factored into a decision to initiate, pursue, and dispose of criminal proceedings by federal, state, and local prosecution authorities. See *Robert L. Dougherty, M.D.*, 76 FR 16823, 16833 n.13 (2011); *Dewey C. MacKay, M.D.*, 75 FR 49956, 49973 (2010) (“[W]hile a history of criminal convictions for offenses involving the distribution or dispensing of controlled substances is a highly relevant consideration, there are any number of reasons why a registrant may not have been convicted of such an offense, and thus, the absence of such a conviction is of considerably less consequence in the public interest inquiry.”), *aff’d*, *MacKay v. DEA*, 664 F.3d 808 (10th Cir. 2011); *Ladapo O. Shyngle, M.D.*, 74 FR 6056, 6057 n.2 (2009).

Therefore, on the present record, the absence of criminal convictions of the Respondent’s owner, pharmacists, or key employees (Factor 3), like the absence of any state recommendation regarding the Respondent’s COR (Factor 1), militates neither for nor against the COR revocation sought by the Government.

Factors 2 and 4: The Respondent’s Experience in Dispensing Controlled Substances, and Compliance with Applicable State, Federal, or Local Laws Relating to Controlled Substances

Much of the Government’s public-interest-factors case seeking a COR revocation for the Respondent is based on conduct most aptly considered under Factors 2 and 4. The Government alleges

and relies on intentional diversion activity conducted primarily by Chris W, the Respondent’s PIC, and the failure on the part of the Respondent to act or have safeguards in place to protect the controlled substances in its care against Chris W’s malfeasance. Specifically, the Government argues that based on what the Respondent (through its owner, Tom Watson) knew or should have known, insufficient care was exercised in preventing controlled substance diversion. The Government argues that the information in the Respondent’s possession compelled it to act, and it failed to do so. Agency precedent has consistently held that the registration of a pharmacy may be revoked as the result of the unlawful activity of the pharmacy’s owners, majority shareholders, officers, managing pharmacist, or other key employee. *EZR, LLC*, 69 FR 63178, 63181 (1988); *Plaza Pharmacy*, 53 FR 36910 (1988).

Regarding Factor 2, in requiring an examination of a registrant’s experience in dispensing controlled substances, Congress manifested an acknowledgement that the qualitative manner and the quantitative volume in which an applicant has engaged in the dispensing of controlled substances may be significant factors to be evaluated in reaching a determination as to whether an applicant should be (or continue to be) entrusted with a DEA COR. In some (but not all) cases, viewing an applicant’s actions against a backdrop of how its regulated activities have been performed within the scope of its registration can provide a contextual lens to assist in a fair adjudication of whether continued registration is in the public interest. Agency precedent has placed some limitations on the weight to be accorded to evidence considered under this factor. For example, the Agency has taken the position that this factor can be readily outweighed by acts held to be inconsistent with the public interest, and evidence analyzed under this factor will be afforded scant weight by the Agency in the face of proven allegations of intentional diversion. *Krishna-Iyer*, 74 FR at 463; *see also Hassman*, 75 FR at 8235 (acknowledging Agency precedential rejection of the concept that conduct inconsistent with the public interest is rendered less so by comparing it with a respondent’s legitimate activities that occurred in substantially higher numbers); *Paul J. Cargine, Jr.*, 63 FR 51592, 51560 (1998) (“[E]ven though the patients at issue are only a small portion of Respondent’s patient population, his prescribing of controlled substances to these individuals raises serious concerns

regarding [his] ability to responsibly handle controlled substances in the future.”). Similarly, in *Cynthia M. Cadet, M.D.*, the Agency determined that existing List I precedent¹⁴² clarifying that experience related to conduct within the scope of the COR sheds light on a practitioner’s knowledge of applicable rules and regulations would not be applied to cases where intentional diversion allegations were sustained. 76 FR 19450, 19450 n.3 (2011). The Agency’s approach in this regard has been sustained on review. *MacKay*, 664 F.3d at 819.

There is no question that the Respondent has been conducting regulated activity under a DEA-issued COR since 1986 without any indication on the present record of reported misconduct that predates the facts that gave rise to these proceedings. Gov’t Ex. 1. That said, as discussed in greater detail *infra*, there is no question that the actions of the Respondent’s PIC, for which the Respondent is accountable, *see EZRX, LLC*, 69 FR at 63181; *Plaza Pharmacy*, 53 FR at 36910, were plainly calculated to facilitate intentional diversion. Thus, even if it were assumed, *arguendo*, that the regulated activity conducted by the Respondent over the past three decades was exclusively benign, under Agency precedent, the intentional nature of the diversion established by the evidence of record would deprive that assumption of its ability to mitigate a sanction.

In addition to Factor 2 (experience in dispensing), Factor 4 (compliance with laws related to controlled substances) is also germane to a correct resolution of the instant case. Regarding Factor 4, to effectuate the dual goals of conquering drug abuse and controlling both legitimate and illegitimate traffic in controlled substances, “Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA.” *Gonzales v. Raich*, 545 U.S. 1, 13 (2005). Under the regulations, “[t]he responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.” 21 CFR 1306.04(a) (2015). Under this language, a pharmacist has a duty “to fill only those prescriptions that conform in all respects with the requirements of the [CSA] and DEA regulations. . . .” *Electronic*

¹⁴¹ It is undisputed that Chris W has been arrested in connection with facts related to this case (Tr. 433, 437–38, 445) and equally undisputed that the record contains no evidence that anyone associated with the Respondent (including Chris W) has been convicted in connection with the misconduct alleged by the Government.

¹⁴² *See, e.g., Volusia Wholesale*, 69 FR 69409, 69410 (2004).

Prescriptions for Controlled Substances, 75 FR 16236, 16266 (2010).

In short, a pharmacist has a “corresponding responsibility under Federal law” to dispense only lawful prescriptions. *Liddy’s Pharmacy, L.L.C.*, 76 FR 48887, 48895 (2011). “The corresponding responsibility to ensure the dispensing of valid prescriptions extends to the pharmacy itself.” *Holiday CVS, L.L.C., d/b/a CVS/Pharmacy Nos. 219 & 5195*, 77 FR 62315, 62341 (2012) (citing *Med. Shoppe-Jonesborough*, 73 FR at 384; *United Prescription Servs., Inc.*, 72 FR 50397, 50407–08 (2007); *EZRX, LLC*, 69 FR at 63181; *Role of Authorized Agents in Communicating Controlled Substance Prescriptions to Pharmacies*, 75 FR 61613, 61617 (Oct. 16, 2010); *Issuance of Multiple Prescriptions for Schedule II Controlled Substances*, 72 FR 64921, 69424 (Nov. 19, 2007)). Settled Agency precedent has interpreted this corresponding responsibility as prohibiting the filling of a prescription where the pharmacy, through its pharmacist, “knows or has reason to know” that the prescription is invalid. *E. Main St. Pharmacy*, 75 FR 66149, 66163 (2010); *Bob’s Pharmacy & Diabetic Supplies*, 74 FR 19599, 19601 (citing *Med. Shoppe-Jonesborough*, 73 FR at 381).

The Agency has interpreted this “legitimate medical purpose” feature of the corresponding responsibility duty “as prohibiting a pharmacist from filling a prescription for a controlled substance when he either knows or has reason to know that the prescription was not written for a legitimate medical purpose,” and has been equally consistent in its admonishment that “[w]hen prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby avoid [actual] knowledge of the real purpose of the prescription.” *Sun & Lake Pharmacy, Inc.*, 76 FR 24523, 24530 (2011); *Liddy’s Pharmacy*, 76 FR at 48895; *E. Main St. Pharmacy*, 75 FR at 66163; *Lincoln Pharmacy*, 75 FR 65667, 65668 (2010); *Bob’s Pharmacy*, 74 FR at 19601.

When considering whether a pharmacy has violated its corresponding responsibility, the Agency considers whether the *entity*, not the pharmacist, can be charged with the requisite knowledge. See *United Prescription Servs.*, 72 FR at 50407 (finding that the Respondent pharmacy violated its corresponding responsibility because “an *entity* which voluntarily engages in commerce [to] other States is properly charged with knowledge of the laws regarding the practice of medicine in those States” (emphasis added)); see also *Pharmboy Ventures Unlimited,*

Inc., 77 FR 33770, 33771 n.2 (2012) (“DEA has long held that it can look behind a pharmacy’s ownership structure ‘to determine who makes decisions concerning the controlled substance business of a pharmacy.’” (quoting *Carriage Apothecary*, 52 FR 27599, 27599 (1987)); *S & S Pharmacy, Inc.*, 46 FR 13051, 13052 (1981) (holding that the corporate pharmacy acts through the agency of its PIC). Knowledge obtained by the pharmacists and other employees acting within the scope of their employment may be imputed to the pharmacy itself. See *United States v. 7326 Highway 45 N.*, 965 F.2d 311, 316 (7th Cir. 1992) (“Only knowledge obtained by corporate employees acting within the scope of their employment is imputed to the corporation.”). Agency precedent has consistently held that the registration of a pharmacy may be revoked as the result of the unlawful activity of the pharmacy’s owners, majority shareholders, officers, managing pharmacists, or other key employees. *Holiday CVS*, 77 FR at 62340; *EZRX*, 69 FR at 63181; *Plaza Pharmacy*, 53 FR at 36911.

The evidence of record preponderantly establishes that while acting as the Respondent’s PIC, Chris W twice¹⁴³ dispensed controlled substances to a DEA undercover agent on scrips that he knew were bogus. SOFs 14–18, 20; SOT 3. It was clear that he knew the scrips were fakes because he had been actively engaged in schooling the undercover agent on how to improve his forging skills for future scrips. SOFs 14–18, 20; SOT 3; Tr. 146–50. In a palpable display of arrogance and disregard for his responsibilities, Chris W told the undercover agent that the agent’s fake scrip “looks a lot better than any of the other damn things [he’s] seen.” Gov’t Ex. 18 at 3. He also assured the undercover agent that what he did with the drugs after the drugs left his pharmacy was none of his business. SOT 3(e).

The evidence of record establishes that Chris W engaged in a wild pattern of abusing his authority as a pharmacist while serving as a pharmacist and PIC at the Respondent. Staff members at the pharmacy have been directed by Chris W to dispense controlled substances in the absence of the requisite scrips and in the face of blatant red flags of diversion, and were aware that large quantities of controlled substance shipments delivered to the pharmacy

¹⁴³ Controlled substances were dispensed to the undercover agent by Chris W on November 7, 2014 (Undercover Visit 1) and December 4, 2014 (Undercover Visit 4). SOFs 14, 20.

routinely disappear by the following morning. SOTs 16(b), (e), 17(c). Staff members have also seen Chris W load his backpack with controlled medications and walk out the pharmacy door. SOT 16(f). With the assistance of his friend Eric Horton, he has also taken large amounts of pharmacy documentation out of the pharmacy and secreted it in his home. SOFs 6–12; SOTs 16(g), 19(e), (g), 21. This was done with the knowledge of the Respondent’s staff and in violation of the regulations, which require that the records be maintained by the pharmacy. 21 CFR 1306.15(a)(3) (2015).

Chris W also supplied his girlfriend, Samantha Pemberton, with controlled substances in unmarked bottles without a prescription and created a paper trail at the pharmacy that fraudulently reflected prescriptions from Dr. James Arnold, M.D., an emergency room physician who never treated Pemberton. SOTs 7, 22. When, following a traffic stop, local police officers attempted to ascertain the facts about how Pemberton came into possession of drugs found with her, Chris W misled them on numerous phone calls and provided fabricated documentation that falsely created the impression that Dr. Arnold was her prescriber and that she was legitimately dispensed the drugs. SOT 9; Gov’t Exs. 19, 48, 49; Tr. 52–53.

The record also establishes that Chris W dispensed controlled substances to an individual named A.R. with no prescription whatsoever. SOF 13. Not only did Chris W supply A.R. with controlled substances, but to cover his tracks, he reached out by text message to a dentist acquaintance, Dr. Raymond Hambuchen, who did not know A.R., and asked Dr. Hambuchen to vouch for his criminality. SOTs 1, 15(b)–(d), 10(d); Tr. 20–21; Gov’t Exs. 2, 3. Fortunately, Dr. Hambuchen was not complicit. Records seized at the Respondent demonstrate that Chris W fraudulently dispensed controlled substances to A.R. eleven times under Dr. Hambuchen’s name. SOF 13; SOT 20(d), (e); Gov’t Ex. 4Tr. 185–86.

Chris W spent an evening in the restricted area of the Respondent identifying and assisting his friend, Eric Horton, in liberating copious amounts of controlled substances from the pharmacy. A search incident to an arrest based on a traffic stop of Horton’s truck shortly thereafter yielded a virtual cornucopia of controlled substances from the Respondent that Chris W helped him identify, gather, and pack up at the pharmacy, none of which had a label with Horton’s name on it. SOTs 5(c), 11(e), 12(c); Gov’t Ex. 36; Tr. 98. Chris W also gave controlled substances

to Horton at his (Chris W's) home. SOT 7(c).

Joe Jackson, another of Chris W's friends, was arrested while in possession of a large quantity of controlled substances in Respondent-labeled stock bottles. SOT 13; Gov't Ex. 39. A search of the Respondent's pharmacy records revealed that no patient profile was maintained on Jackson at the pharmacy; thus, the controlled medications he was transporting at the time of his traffic stop were not legally dispensed to him. SOTs 14(c), 20(e).

A search warrant executed at Chris W's home yielded, *inter alia*, hard copies of scrips for five patients who were dispensed controlled substances at the Respondent. SOFs 6–12. Under the regulations, these documents were required to be maintained at the pharmacy. 21 CFR 1306.15(a)(3) (2015).

There is thus no question that Chris W was a bad actor, and less question under Agency precedent that because he was a pharmacist, the PIC, the vice president, and the controller of the Respondent, the Respondent is accountable for every bit of Chris W's misconduct.¹⁴⁴ *Holiday CVS*, 77 FR at 62340; *EZR*, 69 FR at 63181; *Plaza Pharmacy*, 53 FR at 36911. The seminal question here is not whether a sanction is authorized (it clearly is), but whether the Respondent should be sanctioned. For the reasons that follow, that question must be answered in the affirmative.

Notwithstanding the stunning level of controlled substance shortages¹⁴⁵ revealed by the DEA audit,¹⁴⁶ the awareness by pharmacy staff that controlled medications shipped to the

pharmacy routinely disappear by the next morning,¹⁴⁷ the burglary with controlled substance losses reported to the local police,¹⁴⁸ and the large quantities of controlled substances found in the possession of Horton and Jackson (neither of whom were Respondent employees, and Jackson was not even a pharmacy customer), the Respondent has not filed a report of theft or loss (DEA–106) as required by the regulations.¹⁴⁹ SOT 14(b). That the staff has noticed that the pharmacy regularly runs out of controlled medications by the ninth day of each month is clearly evidence that the Respondent was well aware that controlled medications were routinely going missing. SOT 16(b). The repeated failure to report the thefts/losses to DEA constitutes a violation of DEA regulations. 21 CFR 1301.76(b).

It is likewise beyond argument that the owner of the Respondent, Tom Watson, had unequivocal notice from multiple sources over the course of several years that his son, Chris W, approached the disregard of his obligations as a pharmacist as if it were an art form. Tracy Swaim worked for Tom Watson at the Respondent, most of that time as its PIC, for over a quarter of a century. Tr. 232–33. In January of 2012, Swaim told Watson that he was sufficiently troubled by Chris W's illegal hijinks that he intended to resign as the PIC. Tr. 251–56. Unconsoled by Watson's assurances, Swaim conducted a close-out inventory, completed the necessary paperwork to step down, and did so. The fact that Swaim's salary remained unaffected and his hours were not reduced is strong evidence that the demotion was in no way punitive, and that the long-term PIC was making a powerful statement to his employer. Tr. 254–55, 266–67. Tom Watson's reaction was to effect no discernible change in the organization—other than having Chris W replace Swaim as the Respondent's PIC.

Two years and nine months later, when Swaim overheard Pharmacy Technician June Gilbert (a twenty-five-year veteran of the Respondent) tell Watson that Chris W was “giving away” medication, it was more than Swaim could endure, and he warned Watson that he was considering leaving the pharmacy altogether. Tr. 257. Four days later, when Swaim learned from the staff that Chris W's misconduct had not abated, notwithstanding the fact that Swaim had no job prospects and lived in a rural area, he gave his two weeks'

notice and quit. Tr. 257. It would be difficult to conceive of more sincerely-rendered, credible warnings from more trusted employees than those tendered by Tracy Swaim and June Gilbert. Still, Watson was unmoved and left Chris W as the Respondent's PIC.

Tom Watson was also warned of Chris W's blatant misconduct by his nephew, Grant Goode, who briefly worked at the Respondent as a staff pharmacist. When Goode alerted Watson that dozens of dispensing events lacked hard-copy scrips, the owner dismissed it as benign filing errors made by pharmacy staff members. Tr. 277. In view of the fact that Goode was present when Chris W loaded medications in his backpack in plain view of his father,¹⁵⁰ the elder Watson's unwillingness to act likely came as no surprise to Goode. When Watson became suspicious that Grant Goode had brought his concerns to the Pharmacy Board, he had another pharmacist (and business partner of Chris W) dismiss him from the job. Tr. 291. The reaction of this pharmacist, Glenn Wood (also a key employee and supervisory pharmacist), to Goode's concerns was not to elevate the issue or to investigate the allegations; his response was merely to take offense on behalf of the Watsons and defend them. Tr. 427, 429.

Tom Watson also disregarded concerns expressed by his former long-time store manager and partner, Steve Goode (Goode.1). While co-owning the Mayflower store with Watson, Goode.1 had determined that while Chris W was the PIC, pharmacy ordering was going through the roof while sales were static. Tr. 490–92. When he brought this concern to Watson's attention, the two men met with Chris W, and Goode.1 was essentially told to keep his nose out of the pharmacy side of the house. Tr. 493.

Goode.1 also informed Watson that Chris W had granted access to the pharmacy to a former employee while the pharmacy was closed and enabled her to dispense medications to her friends and relatives free of charge. Tr. 496–99. Consistent with his custom in such matters, Watson assured Goode.1 that he would take care of the issue and proceeded to do nothing. Tr. 496–97. The partnership between the two men was subsequently dissolved. *Id.*

The Respondent also ran afoul of state controlled substance laws. The Arkansas Uniform Controlled Substances Act specifies that no controlled substance is to be dispensed without a prescription issued in compliance with federal laws and

¹⁴⁴ Although the Respondent has stipulated that Chris W is and was a part-owner of the Respondent (SOF 20), it subsequently sought to challenge the basis of that stipulation with an affidavit from Chris W's mother offered after the hearing was completed. ALJ Ex. 21. The motion was granted over the Government's objection. ALJ Exs. 22, 23. However, inasmuch as Agency precedent does not distinguish between the responsibility imputed to a Respondent from an owner and the responsibility imputed from a managing pharmacist, officer, or other key employee, *Holiday CVS*, 77 FR at 62340; *EZR*, 69 FR at 63181; *Plaza Pharmacy*, 53 FR at 36911, the admission of the affidavit (Resp't Ex. 15), especially when considered with the diminished weight accorded by the regulations, 21 CFR 1316.58(b) (2015), adds virtually nothing to the equation.

¹⁴⁵ Inasmuch as the shortages based on a DEA audit were not noticed in the OSC or the prehearing statements, the audit results, standing alone, cannot form an independent basis for sanction. *CBS Wholesale Distribs.*, 74 FR 36746, 36750 (2009) (citing *Darrel Risner, D.M.D.*, 61 FR 728, 730 (1996)); see also *Roy E. Berkowitz, M.D.*, 74 FR 36758, 36759–60 (2009). However, the Government did sufficiently notice the Respondent's failure to file a report of theft or loss of controlled substances. ALJ Ex. 1 at 4.

¹⁴⁶ Tr. 181.

¹⁴⁷ SOTs 16(b), 17(c).

¹⁴⁸ SOTs 2(e), 19(f); Tr. 259–60, 323.

¹⁴⁹ 21 CFR 1301.76(b) (2015).

¹⁵⁰ Tr. 280.

regulations. Ark. Code Ann. § 5–64–308 (2013). Thus, Chris W’s practice of dispensing controlled substances without scrips to his girlfriend, friends, and associates, and his facilitation of a former employee’s weekend drug dispensing event to her friends and family, clearly violated state laws related to controlled substances, and was passively endured by the Respondent. As discussed *supra*, the Respondent was credibly informed by numerous sources, was well aware of Chris W’s misconduct, and chose to do nothing.

When Chris W dispensed controlled substances twice to an undercover DEA agent where he knew that the presented scrips were fraudulent, he also violated his state “corresponding responsibility” to ensure that the prescribing and dispensing of a controlled substance is proper. Ark. Admin. Code § 007.07.2–II–VIII(B)(1) (2014); *see also* Ark. Admin. Code § 070.00.4–04–00–0009 (2014) (“Any pharmacist . . . participating in the preparation of orders or dispensing of prescriptions . . . is responsible for the validity and legality of the order or prescription.”). Prescriptions can only be issued for “legitimate medical purposes” by “an individual practitioner who is legally authorized to prescribe . . . controlled substances in the State of Arkansas and who holds a current [DEA COR].” Ark. Admin. Code § 007.07.2–II–VIII. Chris W knew the scrips were frauds, and even sought to improve the caliber of the undercover agent’s future forgeries. Chris W’s actions as pharmacist and later PIC violated Arkansas laws and under the circumstances, the Respondent is fully responsible with knowledge of his malfeasance.

Arkansas regulations delineate a number of responsibilities for supervisory pharmacists; those persons responsible for supervising pharmacy personnel are “responsible for the validity and legality” of the prescriptions dispensed and also “responsible for any shortage of drugs classified as controlled substances . . . which occurs under their supervision.” Ark. Admin. Code § 070.00.4–04–00–0009 (2014). Likewise, state regulations outline the responsibilities unique to those individuals designated as pharmacists-in-charge: “The [PIC] is responsible for the security and accountability of all drugs stored in a pharmacy and is responsible for the validity and legality of all prescriptions and/or orders upon which drugs are dispensed in a pharmacy. The [PIC] is responsible for ensuring that pharmacy staff has been appropriately trained to follow the pharmacy’s policies and

procedures.” Ark. Admin. Code § 070.00.4–04–00–0010 (2014).

Under Arkansas law, “[t]he permit holder and the [PIC] are jointly responsible for the security and accountability of all controlled drugs stored in and/or ordered by a pharmacy.” Ark. Admin. Code § 070.00.4–04–00–0015 (2014). As such, the permit holder is required to “provide diversion prevention and detection tools appropriate for the particular pharmacy setting and the pharmacist in charge shall implement and monitor the diversion control and detection tools provided by the permit holder.” *Id.* Such policies and procedures developed by the permit holder and the PIC to prevent and detect diversion may include “limiting access to by non-pharmacists to controlled drug shipments”, “confirming pill count before opening a new bottle of high risk drugs”, and “tracking pill count on stock bottles.” *Id.* As discussed *supra*, Respondent’s lack of any meaningful measures of checks and balances to guard against diversion by a pharmacist, the sharing of the CSOS password, and its owner’s obdurate refusal to act on credible warning after warning placed the Respondent in violation of the Arkansas security and accountability provisions.

Chris W served as a staff pharmacist and PIC at the Respondent. He is the son of the majority owner of the business, and diverted controlled substances with equal measures of wild abandon and complete impunity. The Respondent knew its pharmacist was violating federal and state laws and diverting copious amounts of controlled substances and elected to take no action. Consideration of the record evidence under Factors 2 and 4 militate powerfully and conclusively in favor of the COR revocation sought by the Government.

Factor 5: Such Other Conduct Which May Threaten the Public Health and Safety

The fifth statutory public interest factor directs consideration of “[s]uch other conduct which may threaten the public health and safety.” 21 U.S.C. 823(f)(5) (2012) (emphasis added). To qualify for consideration under this factor, the evidence must constitute: (1) Conduct¹⁵¹ (2) not covered by application of the other four public interest factors (3) which has the potential to threaten the public health

¹⁵¹ *See Holloway Distrib.*, 72 FR 42118, 42126 n.16 (2007).

and safety.¹⁵² Agency precedent has generally embraced the principle that any conduct that is properly the subject of Factor 5 must have a nexus to controlled substances and the underlying purposes of the CSA. *Terese, Inc.*, 76 FR 46843, 46848 (2011); *Tony T. Bui, M.D.*, 75 FR 49979, 49989 (2010) (stating that prescribing practices related to a non-controlled substance such as human growth hormone may not provide an independent basis for concluding that a registrant has engaged in conduct which may threaten public health and safety); *cf. Paul Weir Battershell, N.P.*, 76 FR 44359, 44368 n.27 (2011) (noting that although a registrant’s non-compliance with the Food, Drug, and Cosmetic Act is not relevant under Factor 5, consideration of such conduct may properly be considered on the narrow issue of assessing a respondent’s future compliance with the CSA). Only conduct that has “a nexus to controlled substances and the underlying purposes of the CSA” may be considered under this factor. *Joe W. Morgan, D.O.*, 78 FR 61961, 61977 (2013); *accord Holiday CVS*, 77 FR at 62345.

Even the Respondent seems to agree that the depth and breadth of Chris W’s arrogance and imagination in his extended efforts to flout the CSA is remarkable by any standard. During his enthusiastic campaign of diversion for profit, there were certainly acts he committed that were both inside and outside the other public interest factors considered here. However, there were two “other conduct” undertakings¹⁵³ that stood out from the rest as deserving of separate consideration: Providing advice to the DEA undercover agent on how to improve his scrip forgery efforts¹⁵⁴ and generating false documents and supplying them to law enforcement to cover his tracks in supplying Samantha Pemberton with drugs. Both stand out as worthy of separate consideration under Factor 5.¹⁵⁵

There is little doubt that on the present record, where the Respondent’s owner stubbornly ignored every warning sign that Chris W, his PIC and his son, was essentially on a campaign to abuse his authority and divert drugs on an unprecedented level, that the Respondent should be and is wholly accountable Chris W’s Factor 5 conduct.

¹⁵² *Jacobo Dreszer*, 76 FR 19386, 19386 n.3, 19434 (2011); *Michael J. Aruta, M.D.*, 76 FR 19420, 19420 n.3 (2011); *Beau Boshers, M.D.*, 76 FR 19401, 19402 n.4 (2011).

¹⁵³ This is certainly not offered as an exhaustive list of all Chris W’s Factor 5-eligible actions.

¹⁵⁴ SOFs 15–18, 20; SOT 3; Tr. 146–50.

¹⁵⁵ SOT 9(e)–(g); Gov’t Exs. 48, 49.

Holiday CVS, 77 FR at 62340; *EZR*X, 69 FR at 63181; *Plaza Pharmacy*, 53 FR at 36911. There is equally little question that consideration of the record evidence under Factor 5 militates powerfully in favor of the revocation of the Respondent's COR.

Recommendation

Inasmuch as the Government has preponderantly established that the Respondent's PIC engaged in behavior that is violative of Federal and state law regarding controlled substances dispensing practices and a pharmacist's corresponding responsibility, that the Respondent treated the misconduct with deliberate indifference, and that the Respondent systemically failed to maintain adequate controls to protect against theft or loss of controlled substances, the Government has supplied sufficient evidence to make out a *prima facie* case that maintaining the Respondent's COR would be contrary to the requirements of 21 U.S.C. 823 and 824. As the Government has sustained its burden to show that the Respondent committed acts inconsistent with the public interest, the burden shifts to the Respondent to show that it can be entrusted with a DEA registration. "[T]o rebut the Government's *prima facie* case, [the Respondent is] required not only to accept responsibility for [the established] misconduct, but also to demonstrate what corrective measures [have been] undertaken to prevent the reoccurrence of similar acts." *Hassman*, 75 FR at 8236; *Hoxie*, 419 F.3d at 483; *Lynch*, 75 FR at 78749 (Respondent's attempts to minimize misconduct held to undermine acceptance of responsibility); *Mathew*, 75 FR at 66140, 66145, 66148; *Aycock*, 74 FR at 17543; *Abbadessa*, 74 FR at 10078; *Krishna-Iyer*, 74 FR at 463; *Med. Shoppe-Jonesborough*, 73 FR at 387. Both prongs are required, and one is irrelevant without the other.

The Government's *prima facie* burden having been met,¹⁵⁶ an unequivocal acceptance of responsibility stands as a condition precedent for the Respondent to prevail. *Mathew*, 75 FR at 66148. This feature of the Agency's interpretation of its statutory mandate on the exercise of its discretionary function under the CSA has been sustained on review. *MacKay*, 664 F.3d at 822. While it is true that the Respondent, through counsel, commendably entered into an extensive and reasonable array of evidentiary and testimonial stipulations in this case, no

amount of prudent legal advice could save the Respondent from itself. During his testimony, Tom Watson, the majority owner of the Respondent, doggedly maintained that the responsibility for every bit of horrendous misconduct committed by his son/PIC was his son's responsibility to bear. Tr. 354–56, 358, 362. Watson obdurately clung to the (false) notion that delegation of his authority equates with absolution from his responsibility. Tr. 358. He is mistaken, and his position in this regard is made even more unreasonable by the fact that he has spent years turning a blind eye to warning after warning. Under longstanding Agency precedent, Watson's failure to accept any level of responsibility has virtually precluded the Respondent's ability to avoid a sanction in this case.

Inasmuch as the Respondent has not accepted responsibility, evidence of remedial steps is irrelevant. *Hassman*, 75 FR at 8236. However, even if the remedial steps offered by the Respondent were considered, they would not alter the result. Prospective PIC Glenn Wood's testimony concerning all the extra security measure he intends to take¹⁵⁷ suffers from the same fundamental defect that Watson's representations regarding his anticipated increased pharmacy involvement¹⁵⁸ and implementation of his Proposed Policy¹⁵⁹ do: both men were present and did nothing when the Respondent's PIC, Chris W, ran wild. These men are a major part of the problem, not the champions of a solution that can be afforded any genuine credence.

Although there was no cognizable acceptance of responsibility, the Respondent took the position that consideration should be given to the fact that its pharmacy serves an underserved, primarily indigent, rural community. Resp't Brf. at 114; Tr. 404, 429–30. Even apart from the potential irony in concluding that a rural, indigent community would garner significant benefit from a COR holder who has consistently refused to take even the smallest step to mitigate his son's wholesale diversion of dangerous drugs, Agency precedent is clear that normal hardships to the practitioner, and even the surrounding community, which are attendant upon the denial of a registration, are not a relevant consideration. *Cheek*, 76 FR at 66972–73; *Abbadessa*, 74 FR at 10078; *Owens*, 74 FR at 36757. Suffice it to say that the

Respondent's community impact argument, even if it were not rendered irrelevant by Agency precedent (which it is), is not persuasive on the present record.

That a sanction is authorized does not end the inquiry. In determining whether and to what extent imposing a sanction is appropriate, consideration must be given to both the egregiousness of the offenses established by the Government's evidence and the Agency's interest in both specific and general deterrence. *Ruben*, 78 FR at 38364, 38385. As discussed *supra*, the conduct of the Respondent, through its PIC, and as ignored by its owner, was stunning. Not only were dangerous controlled drugs being doled out to friends, love interests, and customers, but the apparatus of the Respondent was actively employed by Chris W to accomplish his misconduct. Chris W used the Respondent's privileges to order and store controlled substances as if he were running a big-box retailer specializing in drug dealing. No amount of security measures, cameras, documents, or safety protocols could defend the public against his father's deliberate indifference. Chris W even once loaned out the store so that a former employee could mete out drugs to her friends and family. There is no question that a thoughtful consideration of the egregiousness of the established misconduct compels the revocation sought by the Government.

Regarding the issue of deterrence, there is no question that a sanction that falls short of revocation would undermine the Agency's legitimate interests in both specific and general deterrence. On the issue of specific deterrence, there is nothing in the record that lends any support to the proposition that Tom Watson's future behavior will be any different from his past behavior. Although the Respondent represents that (the retired) Watson intends to become more active in the business in the future,¹⁶⁰ his level of activity was never the issue. He had his closest associates, managers, business partners, employees, pharmacists, and relatives engaged in a consistent chorus implicating Chris W as a persistent and criminal diverter, yet Watson was unmoved. It strains credulity to think that the exercise of successfully defending an ISO at administrative proceedings before the DEA will be the catalyst of change. There is no reason to believe that Tom Watson intends to manage his pharmacy differently than he has for decades, and every reason to believe that escaping consequences here

¹⁵⁶ The Respondent concedes that the Government has met its *prima facie* burden. Resp't Brf. at 2–3.

¹⁵⁷ Tr. 416–19, 444.

¹⁵⁸ Resp't Brf. at 16; Tr. 320, 346–47.

¹⁵⁹ Gov't Ex. 1.

¹⁶⁰ Resp't Brf. at 16; Tr. 320, 346–47.

will be as destructive as the impunity with which he ignored every warning sign that his pharmacy was a mess, and rendered so at the hands of his son.

Regarding general deterrence, as the regulator in this field, the Agency bears the responsibility to deter similar misconduct on the part of others for the protection of the public at large. *Ruben*, 78 FR at 38385. The ubiquitous nature of the drug diversion taking place within plain sight of the COR holder, the Respondent's employees, law enforcement, and the public at large

would render anything less than a revocation as an invitation to others in the regulated community to ignore trouble in their own operations. The inescapable lesson to other COR holders would be that delegation of authority does equate to delegation of responsibility. The Agency's interests in general deterrence are served best by revoking the Respondent's COR.

A balancing of the statutory public interest factors, coupled with consideration of the Respondent's failure to accept responsibility and the

Agency's interests in deterrence, supports the conclusion that the Respondent should not continue to be entrusted with a registration.

Accordingly, the Respondent's DEA COR should be REVOKED, and any pending applications for renewal should be DENIED.

Dated: May 13, 2015.

John J. Mulrooney, II,
Chief Administrative Law Judge.

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Part III

Department of Homeland Security

Federal Emergency Management Agency

44 CFR Part 206

Factors Considered When Evaluating a Governor's Request for Individual Assistance for a Major Disaster; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID FEMA-2014-0005]

RIN 1660-AA83

Factors Considered When Evaluating a Governor's Request for Individual Assistance for a Major Disaster

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: FEMA proposes to revise its regulations to comply with Section 1109 of the Sandy Recovery Improvement Act of 2013 which requires FEMA, in cooperation with State, local, and Tribal emergency management agencies, to review, update, and revise through rulemaking the Individual Assistance factors FEMA uses to measure the severity, magnitude, and impact of a disaster.

DATES: Comments must be received on or before January 11, 2016.

ADDRESSES: You may submit comments, identified by docket ID FEMA-2014-0005, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail/Hand Delivery/Courier: Regulatory Affairs Division, Office of Chief Counsel, 500 C Street SW., 8NE, Washington, DC 20472-3100.

Instructions: 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 e-Rulemaking 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 Privacy Notice link on the homepage of <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov>, click on "Advanced Search," then enter "FEMA-2014-0005" in the "By Docket ID" box, then select "FEMA" under "By Agency," and then click "Search." Submitted comments may also be inspected at the Office of Chief Counsel, Federal Emergency Management

Agency, 500 C Street SW., 8NE, Washington, DC 20472-3100.

FOR FURTHER INFORMATION CONTACT:

Mark Millican, FEMA, Individual Assistance Division, 500 C Street SW., Washington, DC 20472-3100, (phone) 202-212-3221 or (email) FEMA-IA-Regulations@fema.dhs.gov.

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I. Public Participation

We encourage you to participate in this rulemaking by submitting comments and related materials. We will consider all comments and material received during the comment period.

If you submit a comment, identify the agency name and the docket ID for this rulemaking, indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, or delivery to the address under the **ADDRESSES** section. Please submit your comments and material by only one means.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal e-Rulemaking 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 a link on the homepage of www.regulations.gov.

Viewing comments and documents: For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking Portal at <http://www.regulations.gov>. Background documents and submitted comments may also be inspected at the Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street SW., 8NE, Washington, DC 20472-3100.

II. Executive Summary

A. Purpose of the Regulatory Action

1. The Need for the Regulatory Action and How the Action Will Meet the Need

On January 29, 2013, the President signed the Sandy Recovery Improvement Act of 2013 (SRIA) into law (Pub. L. 113-2). Section 1109 of SRIA requires FEMA in cooperation with State, local, and Tribal emergency management agencies, to review, update, and revise through rulemaking the factors found at 44 CFR 206.48 that FEMA uses to determine whether to recommend provision of Individual Assistance (IA) during a major disaster. These factors help FEMA measure the severity, magnitude, and impact of a disaster.

FEMA is proposing this rule to comply with SRIA and to provide clarity on the IA declaration factors that FEMA currently considers in support of its recommendation to the President on whether a major disaster declaration authorizing IA is warranted. The additional clarity may reduce delays in the declaration process by decreasing the back and forth between States and FEMA in the declaration process. FEMA is also proposing new factors on Fiscal Capacity and Resource Availability to provide additional context on potential disaster situations. The proposed rule would also satisfy the requirements outlined above in Section 1109 of SRIA.

2. Legal Authority

FEMA has authority for this proposed rule pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). 42 U.S.C. 5121 *et seq.* Section 401 of the Stafford Act lays out the procedures for a declaration for FEMA's major disaster assistance programs when a catastrophe occurs in a State. The specific changes proposed by this NPRM are intended to comply with Section 1109 of the Sandy

Recovery Improvement Act of 2013. Public Law 113-2.

B. Summary of Major Provisions

FEMA proposed to revise the factors found at 44 CFR 206.48 that FEMA uses to determine whether to recommend provision of Individual Assistance during a major disaster. The current factors found at 44 CFR 206.48 for Individual Assistance include the following factors: (1) Concentration of Damages, (2) Trauma, (3) Special Populations, (4) Voluntary Agency Assistance, (5) Insurance, and (6) Average Amount of Individual Assistance by State.

FEMA is proposing to revise the current factors by providing additional clarity regarding the considerations FEMA evaluates when making a recommendation on whether Individual Assistance is warranted for a major disaster declaration. FEMA is proposing to revise 44 CFR 206.48 to include the following factors: (1) State Fiscal Capacity and Resource Availability, (2) Uninsured Home and Personal Property Losses, (3) Disaster Impacted Population Profile, (4) Impact to Community Infrastructure, (5) Casualties, and (6) Disaster Related Unemployment. As is currently the practice, FEMA will continue to use a myriad of factors and data to formulate its recommendations to the President on major disaster declarations that authorize IA. No single data point or factor would determine on its own FEMA's ultimate recommendation nor would any single factor necessarily affect the President's ultimate determination of whether a major disaster declaration authorizing IA is warranted. FEMA purposely declined to be more specific in areas of the proposed rule so that FEMA does not limit Presidential discretion for declaring a major disaster declaration that authorized Individual Assistance because the parameters for a major disaster declaration can change from Administration to Administration. FEMA wants to ensure that we retain as much flexibility as possible so that we can conform to what the President wants in their disaster declaration recommendations. The proposed factors would not limit the President's discretion regarding major disaster declarations.

III. Background

A. The Federal Disaster Declaration Process

When a catastrophe occurs in a State, the State's Governor may request a Presidential declaration of a major

disaster¹ pursuant to Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). 42 U.S.C. 5170; 44 CFR 206.36(a). Such a request must be based on a finding that the disaster is of such severity and magnitude that an effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. 42 U.S.C. 5170.

The capacity to respond to a catastrophe varies from State to State. The initial decision on whether supplemental Federal assistance is necessary for a State responding to and recovering from a natural disaster lies with each State. The basis for any State request for a major disaster declaration must be a finding that (1) the situation is of such severity and magnitude that an effective response is beyond the capacities of the State and affected local governments, and (2) Federal assistance under the Stafford Act is necessary to supplement the efforts and available resources of the State, local governments, disaster relief organizations, and compensations by insurance for disaster-related losses. 44 CFR 206.36(b)(1)-(2).

The President's declaration may authorize various types of Federal assistance, falling under three main program areas: Public Assistance, Individual Assistance (IA), and Hazard Mitigation. Public Assistance provides supplemental Federal disaster grant assistance for debris removal, emergency protective measures, and the repair, replacement, or restoration of disaster-damaged, publicly owned facilities and the facilities of certain Private Non-Profit organizations. Individual Assistance provides financial or direct assistance to individuals and households who have been injured or whose property has been damaged or destroyed as a result of a Federally-declared disaster, and whose losses are not covered by insurance or other means. Additionally, a declaration authorizing Individual Assistance may authorize crisis counseling, disaster case management, disaster unemployment assistance, and disaster legal services.

¹ A major disaster is any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. 42 U.S.C. 5122; 44 CFR 206.2(17).

The Hazard Mitigation Grant Program provides grants to States and local governments to implement long term hazard mitigation measures after a major disaster declaration. FEMA's regulations at 44 CFR part 206 Subpart B describe the process leading to a Presidential declaration of a major disaster and the actions triggered by such a declaration. 44 CFR 206.31.

1. Preliminary Damage Assessment (PDA)

An initial step in the major disaster declaration process is the preliminary damage assessment (PDA). The PDA is used to determine the impact and magnitude of damage and the resulting unmet needs of individuals, businesses, the public sector, and the community as a whole. 44 CFR 206.33. When the State official responsible for disaster operations determines that an event may be beyond the capabilities of the State and local government to respond, the State will request that the FEMA Regional Administrator perform a joint FEMA-State PDA. 44 CFR 206.33(a). A damage assessment team is formed, which is composed of at least one representative of the Federal government and one representative of the State. 44 CFR 206.33(b). A local government representative familiar with the extent and location of damage in the community is also included if possible. 44 CFR 206.33(b). Other State and Federal agencies, and voluntary relief organizations may also be asked to participate, as needed. 44 CFR 206.33(b). A FEMA official will brief team members on damage criteria, the kind of information to be collected for the particular incident, and reporting requirements. 44 CFR 206.33(b).

The length of time required to conduct a PDA varies based upon the circumstances of the event. In large disasters, a major disaster declaration may be made prior to completing a PDA, in which case a damage assessment is conducted following the declaration in order to determine additional program needs. Damage that is widespread may take considerably longer to verify than damage in a concentrated area, as there is a greater geographic area to assess. Certain types of disasters such as flooding, or disasters affecting remote or isolated areas, may slow PDAs down due to limited accessibility. Depending on the above circumstances, a PDA can take anywhere from a day or two to a week or more. On average, a PDA can be completed within a week. At the close of the PDA, FEMA consults with State officials to discuss findings and reconcile any differences. 44 CFR 206.33(c).

2. State's Submission of Its Declaration Request to FEMA

During or at the close of the PDA, the Governor of a State submits the request for a major disaster declaration through the appropriate FEMA Regional Administrator. 44 CFR 206.36. The request must be submitted within 30 days of the occurrence of the incident in order to be considered. 44 CFR 206.36(a). The basis for the request must be a finding that (1) the situation is of such severity and magnitude that an effective response is beyond the capabilities of the State and affected local governments, and (2) Federal assistance under the Stafford Act is necessary to supplement the efforts and available resources of the State, local governments, disaster relief organizations, and compensation by insurance for disaster-related losses. 44 CFR 206.36(b)(1)–(2). In addition, the request must include: Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan; an estimate of the amount and severity of damages and losses stating the impact of the disaster on the public and private sectors; information describing the nature and amount of State and local resources which have been or will be committed to alleviate the results of the disaster; preliminary estimates of the types and amount of supplementary Federal disaster assistance needed under the Stafford Act; and certification by the Governor that State and local government obligations and expenditures for the current disaster will comply with all applicable cost sharing requirements of the Stafford Act. 44 CFR 206.36(c)(1)–(5).

3. FEMA's Analysis and Recommendation to the President

Upon receipt of the Governor's request, the FEMA Regional Administrator provides written acknowledgement of the request. 44 CFR 206.37(a). Based on information obtained by the PDA and consultations with appropriate State and Federal officials and other interested parties, the FEMA Regional Administrator promptly prepares a summary of the PDA findings, analyzes the data, and submits a recommendation to FEMA Headquarters. 44 CFR 206.37(b). This Regional Analysis must include a discussion of State and local resources and capabilities and other assistance available to meet the major disaster-related needs. 44 CFR 206.37(b).

Based on all available information, the FEMA Administrator formulates a recommendation which is forwarded to

the President with the Governor's request. 44 CFR 206.37(c). A recommendation for a major disaster declaration is based on a finding that the situation is or is not of such severity and magnitude as to be beyond the capabilities of the State and its local governments, and must include a determination of whether or not supplemental Federal assistance² under the Stafford Act is necessary and appropriate. 44 CFR 206.37(c)(1). In developing a recommendation, FEMA considers factors such as the amount and type of damages; the impact of damages on affected individuals, the State, and local governments; the available resources of the State and local governments, and other disaster relief organizations; the extent and type of insurance in effect to cover losses; assistance available from other Federal programs and other sources; imminent threats to public health and safety; recent disaster history in the State; hazard mitigation measures taken by the State or local governments, especially implementation of measures required as a result of previous major disaster declarations; and other factors pertinent to a given incident. 44 CFR 206.37(c)(1). When preparing its recommendation for Individual Assistance in particular, FEMA considers specific factors described in 44 CFR 206.48(b).

4. Approval or Denial of the Declaration Request

Upon completion of its recommendation, FEMA forwards it to the President along with the Governor's request. The Governor's request may result in either a Presidential declaration of a major disaster or an emergency, or denial of the Governor's request. 44 CFR 206.38(a). The Governor will be promptly notified by the FEMA Administrator of a declaration by the President that a major disaster exists, or that the Governor's request does not justify the use of the authorities of the Stafford Act. 44 CFR 206.39. A State may appeal a denial of declaration request within 30 days after the date of the letter denying the request. 44 CFR 206.46(a).

² The supplemental nature of Federal disaster assistance is a longstanding principle of emergency management and disaster response in this country. After any event, the local officials are the first to respond, by nature of their proximity to the event and knowledge of the area and circumstances. If additional resources are needed, the State then steps in to assist. Once those resources are overwhelmed, or it is clear that they will be overwhelmed, the Governor may request a major disaster declaration. 44 CFR 206.36(a). In the event of a declaration, State and local officials continue to lead their respective response and recovery missions, with Federal support provided under the Stafford Act.

5. Types of Assistance Approved Under the Declaration Request

A major disaster declaration will include the types of assistance that are authorized under the declaration, 44 CFR 206.40(a), although other types may be authorized later, 44 CFR 206.40(c). The types of assistance authorized under the declaration are based upon whether the damage involved and its effects are of such severity and magnitude as to be beyond the response capabilities of the State, the affected local governments, and other potential recipients of supplementary Federal assistance. 44 CFR 206.40(a). A major disaster declaration may authorize all, or only particular types of, supplementary Federal assistance requested by the Governor. 44 CFR 206.40(a). As noted above, when evaluating requests for Individual Assistance, FEMA considers the factors under 44 CFR 206.48(b) to determine whether supplemental Federal Individual Assistance is warranted.

A major disaster declaration authorizing Individual Assistance may include any or all of the following programs:

Individuals and Households Program: The Individuals and Households Program (IHP) provides grants, direct assistance, or both to eligible disaster survivors who have necessary expenses and serious needs that they are unable to meet through other means, such as insurance. 44 CFR 206.110–120. This help may be in the form of housing assistance (including Temporary Housing, Repair, Replacement, and Semi-Permanent or Permanent Housing Construction) as well as assistance to meet “other needs” such as medical, dental, child care, funeral, personal property, and transportation costs.

Crisis Counseling Program: The Crisis Counseling Program (CCP) assists individuals and communities recovering from the effects of a natural or human caused disaster through the provision of community based outreach and psycho-educational services. 44 CFR 206.171. Supplemental Federal funding for crisis counseling is available to the State through two grant mechanism: (1) Immediate Services Program, which provides funds for up to 60 days of services immediately following a disaster declaration; and (2) the Regular Services Program, which provides funds for up to nine months following a disaster declaration.

Disaster Case Management Program: The Disaster Case Management Program (DCMP) is a program that involves a partnership between a disaster case manager and a survivor to develop and

carry out a Disaster Recovery Plan. 42 U.S.C. 5189d. The process involves an assessment of the survivor’s verified disaster caused unmet needs, development of a goal oriented plan that outlines the steps necessary to achieve recovery, organization and coordination of information on available resources that match the disaster caused unmet need, monitoring of progress towards the recovery plan goals and, when necessary, client advocacy.

Disaster Legal Services: Disaster Legal Services provides legal assistance to low income individuals who, prior to or as a result of the disaster, are unable to secure legal services adequate to meet their disaster related needs. 44 CFR 206.164. FEMA, through an agreement with the Young Lawyers Division of the American Bar Association, provides free legal help for disaster survivors.

Disaster Unemployment Assistance: Disaster Unemployment Assistance (DUA) provides unemployment benefits and re-employment services to individuals who have become unemployed as a result of a major disaster and who are not eligible for regular State unemployment insurance. 44 CFR 206.141.

B. Sandy Recovery Improvement Act of 2013

On January 29, 2013, the President signed the Sandy Recovery Improvement Act of 2013 (SRIA) into law (Pub. L. 113–2). Section 1109 of SRIA requires FEMA, in cooperation with State, local, and Tribal emergency management agencies, to review, update, and revise through rulemaking the factors found at 44 CFR 206.48 that FEMA uses to determine whether to recommend provision of Individual Assistance during a major disaster. These factors help FEMA measure the severity, magnitude, and impact of a disaster.

Congress directed FEMA to review, update, and revise these factors, including 44 CFR 206.48(b)(2) related to trauma and the specific conditions or losses that contribute to trauma, to provide more objective criteria for evaluating the need for assistance to individuals, to clarify the threshold for eligibility, and to speed a declaration of a major disaster or emergency³ under

³ The factors that FEMA considers to evaluate the need for assistance to individuals under the Stafford Act are at 44 CFR 206.48. FEMA uses these factors to evaluate a governor’s request for a declaration of a major disaster, not an emergency. SRIA Section 1109 states that FEMA must review, update, and revise the factors in 44 CFR 206.48(b). The factors that FEMA uses to evaluate a governor’s request for emergency assistance, however, are not provided in 44 CFR 206.48(b) or in FEMA’s regulations. Therefore, the scope of this rulemaking

the Stafford Act. Pursuant to SRIA, this rulemaking must be completed by January 29, 2014. Although the necessary process to revise the factors is not yet complete, FEMA intends to complete this process as expeditiously as possible.

SRIA also authorized, among other things, the option for Federally recognized Indian Tribal governments to make a request directly to the President for a Federal emergency or major disaster declaration. FEMA will implement this provision of SRIA in a separate rulemaking.

C. FEMA’s Outreach Efforts Required by the Sandy Recovery Improvement Act

Section 1109 of SRIA requires FEMA to cooperate with State, local, and Tribal emergency management agencies during the process of reviewing, updating, and revising the factors found at 44 CFR 206.48(b). FEMA conducted outreach with stakeholders, including meetings with the National Emergency Managers Association, the International Association of Emergency Managers, the National Advisory Council, FEMA regional offices, and Tribal governments (hereinafter “stakeholder group”). The stakeholder group had widespread participation from individuals involved in emergency management at the State, local, and tribal levels. These outreach efforts were conducted from February 2013 through May 2013 and consisted of in-person conferences and conference calls. During this outreach, a series of themes emerged from the members of the stakeholder group which are discussed below.

1. The Role of Voluntary, Faith, and Community Based Organizations During Disasters

Many in the stakeholder group felt that the consideration of services and benefits provided by voluntary, faith-based, and community-based organizations during a disaster should not continue to serve as an indicator for when supplemental Federal assistance is warranted. The stakeholders felt that voluntary, faith-based, and community-based organization involvement may not be available at the time of a disaster declaration and those organizations do

will apply only to Individual Assistance factors that FEMA considers when evaluating a Governor’s request for a major disaster declaration. Section 502 of the Stafford Act authorizes FEMA to provide IHP assistance as part of an emergency declaration. FEMA has previously considered some of the factors found at 206.48(b) when considering an emergency declaration request that includes IHP assistance. FEMA will continue to consider some of the factors, when applicable, at 44 CFR 206.48(b) when evaluating an emergency declaration request that includes IHP assistance.

not provide funding for the rebuilding or replacement of houses. FEMA currently considers, as an Individual Assistance factor, the extent to which voluntary agencies and State or local programs can meet the needs of disaster survivors. 44 CFR 206.48(b)(4). Voluntary, faith-based, and community-based organizations are often among the first to respond to an event. Following a disaster, voluntary, faith-based, and community-based organizations mobilize to provide immediate assistance such as food, clothing, shelter, cleaning supplies, comfort kits, first aid, and medical care, as well as services including coordinating donations, counseling, home repairs, and rebuilding. FEMA is proposing to continue consideration of the resources made available by such organizations as part of the new "Resource Availability" factor discussed below. FEMA recognizes that the resources provided by the voluntary, faith-based, and community-based organizations are typically not a long term recovery solution for a disaster affected community and that these organizations' financial capabilities are mostly donor-based and dependent on the economic climate. FEMA also believes that information on voluntary, faith-based, and community-based organizations is valuable because it can enhance the picture of disaster needs at a local, grass roots level and may either offset the need for, or reveal a need for, supplemental Federal assistance.

2. The Correlation Between the Population Size of a State and Its Capability To Recover

Several members of the stakeholder group discouraged FEMA from making a correlation between State population size and the capability of that State to recover. More specifically, multiple members of the stakeholder group expressed concern with the table in the current regulations which provides the average amount of Individual Assistance by State. See 206.48(b)(6). This table of averages does not set a threshold for recommending Individual Assistance, but was intended as guidance to States and voluntary agencies as they develop plans and programs to meet the needs of disaster survivors. 44 CFR 206.48(b)(6).

In developing this proposed rule, FEMA evaluated the utility of this table. FEMA determined that the table should be removed because it causes confusion among States, and may be viewed incorrectly as a threshold for whether a State should request Individual Assistance. In addition, the table is based on 1990 Census data, uses

assistance information from 1994–1999, and is based on the previous iteration of the IHP which consisted of two separate programs: (1) The Temporary Housing Assistance Program and (2) the Individual and Family Grant Program. FEMA recognizes that there are many factors, including population, that contribute to a State's capability to respond to and recover from a disaster. FEMA is proposing several factors, discussed below, that will be used in evaluating State capability.

3. Issues With Widespread Damage and Contiguous States

Current 44 CFR 206.48(b)(1) notes that high concentrations of damages generally indicate a greater need for Federal assistance than widespread and scattered damages throughout a State. Stakeholders were concerned that the cost of widespread minimal damage across counties within a State may not be appropriately considered within the concentration of damage factor. The stakeholders wanted greater consideration to widespread events that are costly. FEMA recognizes that as a practical matter, widespread minimal damage spread across a larger geographic area, can overwhelm a State's capability to adequately respond to a disaster. Therefore, FEMA is proposing a factor, discussed below, that will evaluate the estimated cost of assistance for a State.

In events where disasters cross state lines, several emergency managers recommended that a major disaster declaration in one of the States should automatically trigger a major disaster declaration in the other affected State or States. The Stafford Act requires that a Governor's request for a major disaster declaration is based on a finding that the disaster is of such severity and magnitude to be beyond the capabilities of the State and affected local governments. 42 U.S.C. 5170(a). FEMA's major disaster recommendation to the President is based on this same finding. 44 CFR 206.37(c). Each State has different capabilities to respond to, recover from, and mitigate the effects of a disaster. Moreover a disaster that crosses state lines may have differing impacts in the affected states. As such, it is unlikely that every event that impacts multiple states will necessarily be beyond each affected State's respective capabilities. Therefore, rather than recommending that the President automatically declare a disaster for each adjoining State affected by a disaster, FEMA proposes to continue to base its major disaster declaration recommendation on the capability of the affected State and local governments to

respond to the event, in accordance with the requirements for a major disaster declaration in the Stafford Act.

4. Impact on Businesses

Multiple members of the stakeholder group asked FEMA to consider the impact of an incident on businesses. They believe that there is a direct correlation between impacts on businesses and a community's ability to recover. As discussed below, FEMA is proposing revised IA factors that consider the impact to businesses because the impacts of a disaster on businesses may impede a community's ability to recover. Business losses alone, however, will not result in a Presidential major disaster declaration that authorizes IA because the IA grant programs do not provide assistance to businesses. Instead, FEMA considers the effect that business disruptions have on disaster survivors. For example, some survivors may lose work or become unemployed due to a disaster, and may otherwise be ineligible for standard unemployment insurance benefits, thus showing an increased need for DUA.

In addition, the Small Business Administration (SBA) has separate statutory authority and programs, which may be available to assist businesses absent a Presidential major disaster declaration.

5. Decoupling Individual Assistance Programs

Several members of the stakeholder group suggested decoupling IA programs so that States can request specific IA programs instead of receiving a generic major disaster declaration that authorizes all IA programs. The manner in which IA programs are requested and authorized is outside the scope of this proposed rulemaking, which is to revise the factors which FEMA uses to evaluate the need for IA. However, current FEMA policy and practice already allows States to request all IA programs or specific IA programs, as appropriate, via its standardized form, Request for Presidential Disaster Declaration Major Disaster or Emergency, OMB Control Number 1660-0009. This form allows States to "check off" the IA programs they are requesting.

Indeed, there have been recent major disaster declarations, which authorized Disaster Unemployment Assistance and the Crisis Counseling Program, without the other IA programs.⁴ These programs

⁴ For example South Dakota, DR-4155, Severe Winter Storm, Snowstorm, and Flooding, Declared November 8, 2013 (DUA and CCP), 78 FR 72093; Colorado, DR-4134, Black Forest Wildfire, Declared July 26, 2013 (DUA and CCP), 78 FR 51204;

meet specific needs in the disaster-impacted community that may be unrelated to physical disaster damage. FEMA may consider recommending authorization of these programs when they are needed, even in the absence of authorization of the Individuals and Households Program, which is generally directly tied to physical disaster damage.

6. Impacts to Community

FEMA received comments from the stakeholder group suggesting that FEMA assess the impacts from a disaster to a community as a whole and not just consider the damage that occurred to individual houses and residences to determine the need for a major disaster declaration that authorizes IA and the specific IA programs required. FEMA is considering implementing this recommendation in the proposed factor described below entitled, "Impact to Community Infrastructure." FEMA believes that by reporting and examining community impacts instead of just individual residence impacts, FEMA and the State will have a better understanding of the overall impact of the disaster on the lives of individuals in the community and which IA programs would benefit disaster survivors. As discussed in more detail below, significant disruptions to important services such as transportation, schools, child care, eldercare, or police services are likely to impede recovery of that community and may be indicative of a heightened need for Federal assistance. In addition, such impacts may show a specific need for certain IA programs. For example, a community may have relatively low damage impacts to individual residences but a large amount of the community's infrastructure, such as schools or roads, may have been destroyed. Such impacts can be quite traumatic to the community and may suggest a need for specific IA programs such as the Crisis Counseling Program, but not necessarily the Individuals and Households Program. This information will assist FEMA in determining which IA programs to approve when granting a major disaster declaration.

7. Linking Individual Assistance Declarations With Public Assistance Estimated Cost Factor

Some members of the stakeholder group suggested aligning the financial indicators for IA and Public Assistance major disaster declarations. Currently, FEMA uses the following factors to

evaluate the need for a Public Assistance major disaster declaration: Estimated cost of assistance, localized impacts, insurance coverage, hazard mitigation, recent multiple disasters, and programs of other Federal assistance. These factors are focused almost entirely on the impact of the event on State, local, and tribal governments, as well as certain private non-profit organizations. Members of the stakeholder group specifically identified the estimated cost of assistance factor as an approach that could be applied to IA. Under this factor, FEMA evaluates the estimated cost of Federal and non-federal public assistance against the statewide population to give a measure of the per capita impact within the State. 44 CFR 206.48(a)(1). That factor also establishes a \$1 million threshold, based on the proposition that even the smallest population States have the capability to cover that level of public assistance infrastructure damage. Under FEMA's current regulations, there is no corresponding IA single indicator designed to evaluate the total cost of the disaster against the capability of a requesting State.

FEMA agrees with the comments received from emergency managers that the fiscal capacity of a State should be considered, but FEMA does not agree that the Public Assistance per capita indicator measure should be adopted for this purpose. Instead, as discussed below, FEMA proposes to use Total Taxable Resources and Gross Domestic Product by State as indicators of a State's fiscal capacity. For reasons discussed below, FEMA believes that these indicators, calculated by the U.S. Department of Treasury and the U.S. Commerce Department's Bureau of Economic Analysis (BEA), are more appropriate for the purposes of evaluating a State's fiscal capacity and its capability to meet the needs of individuals after an event. In addition to Total Taxable Resources and Gross Domestic Product by State, FEMA will consider the estimated cost of assistance and States would also have the ability to submit other information relevant to their fiscal capacity. FEMA's proposal of a fiscal capacity factor is discussed further below.

8. Thresholds

Some members of the stakeholder group indicated that they would like a specific "hard" threshold that indicates whether a State would be eligible to receive a major disaster declaration authorizing IA. The stakeholders felt that if there was an established threshold it would give States a clear

idea of what level of damage and need the State must have before requesting assistance. The stakeholders believed that this would prevent States from spending the time compiling the data and requesting a declaration when they have not sustained enough damage to qualify for a major disaster declaration that authorizes IA.

Section 320 of the Stafford Act prohibits the denial of assistance to a geographic area based solely use of an arithmetic formula or a sliding scale based on income or population. 42 U.S.C. 5163. Although FEMA determined that any hard thresholds or inflexible formula would offend the principles of Section 320,⁵ FEMA believes that a systematic and objective approach using standardized factors is important for making informed and consistent recommendations to the President as well as enhancing predictability for a State when they request IA. As discussed throughout section IV, FEMA is proposing to use objective data from other Federal agencies to inform the overall assessment of the request, but, in keeping with the principles of Section 320 and recognizing that every disaster presents unique circumstances, this data alone will not be independently dispositive of whether FEMA recommends the need for IA.

9. Insurance

Under its current regulations, FEMA considers the amount of insurance coverage when evaluating the need for IA. 44 CFR 206.48(b)(5). FEMA received comments from the stakeholder group that said that this insurance coverage factor could be viewed as a penalty for people that have limited insurance or insurance that does not cover the specific disaster damage. FEMA does not agree that the insurance coverage factor penalizes disaster survivors for maintaining private homeowner's insurance or flood insurance. FEMA's programs are not loss indemnification programs. They do not ensure that an applicant is returned to their pre-disaster living condition nor can they cover all disaster-related losses. FEMA assistance is not as comprehensive as insurance coverage and the amount of money that an insurance company will

⁵ As noted above, FEMA applies a \$1 million minimum threshold when evaluating requests for Public Assistance. This is based upon a determination that even the smallest states can be expected to cover that level of damage and that disaster assistance is intended to be supplemental in nature. The minimum threshold is not a sliding scale or an arithmetic formula, nor is it based on population or income. Rather, it is related directly to the degree of damage only. As such, there is no conflict with section 320 of the Stafford Act.

provide as a settlement is typically greater than the dollar amount of assistance FEMA is legally permitted to provide.⁶ FEMA takes insurance coverage into consideration under current 44 CFR 206.48(b)(5) because, under the Stafford Act, Federal disaster assistance cannot duplicate assistance from any source, including available insurance proceeds. When evaluating this factor, FEMA considers the type of disaster damage when determining whether there is insurance coverage. For disaster survivors with insurance that does not cover the specific disaster damage, their losses are considered uninsured.

Comments that FEMA received from the stakeholder group raised additional concern with the insurance data that FEMA uses because it can be inaccurate leading FEMA to under- or over-estimate the actual insurance penetration rates⁷ within a community. FEMA currently utilizes National Flood Insurance Program (NFIP) data to determine insurance penetration rates for flood damages and Census data to determine homeowners' insurance coverage percentages. FEMA uses the percentage of owner-occupied homes with a mortgage based on Census data to determine an insurance penetration rate. FEMA assumes that a home with a mortgage would require home insurance coverage. FEMA is pursuing additional resources beyond NFIP and Census data to verify insurance penetration rates in order to have the most accurate insurance information available. FEMA is requesting that stakeholders and the public provide information and suggestions on potential sources of data for the most accurate insurance information. FEMA will consider suggestions during the development of the final rule.

10. Homes in Foreclosure

FEMA received comments from the stakeholder group related to homes in foreclosure. Some commenters stated that if an area with a high foreclosure rate is affected by a disaster, these foreclosed homes without an owner could be a greater burden to the State in

⁶For disasters occurring in Fiscal Year 2016 the maximum amount of financial assistance provided to an individual or household under section 408 of the Stafford Act (IHP) with respect to any single emergency or major disaster is \$33,000. See 80 FR 62086, Oct. 15, 2015. This amount is adjusted annually based on the Consumer Price Index for All Urban Consumers as calculated by the Department of Labor, Bureau of Labor Statistics.

⁷Insurance coverage rates and insurance penetration rates are both currently captured in 44 CFR 206.48(b)(5). In the new proposed regulation, both of these insurance rates will be captured at 206.48(b)(2)(vi).

the recovery process. FEMA considered this information and has preliminarily concluded that foreclosure data should not be specified in our evaluation factors. FEMA's IA programs do not provide any form of assistance for foreclosed homes. Repair assistance is available only for owner-occupied primary residences. As such, homes without an owner, or homes owned by a bank or other creditor would not be eligible for assistance. FEMA recognizes that high levels of foreclosure may be associated with economic difficulties in the affected area that could also negatively impact a community's ability to recover. However, FEMA believes other factors including poverty level, pre-disaster unemployment, and per capita personal income will be adequate indicators of economic health in most circumstances. If a State believes that homes in foreclosure will impact their capability to respond to the disaster, then the State may articulate this concern in the narrative portion of their declaration request. FEMA considers all relevant information provided in a State's request. 44 CFR 206.48.

11. Incentives for State Sponsored IA Programs

FEMA received comments from the stakeholder group stating that FEMA should provide incentives for States to have their own IA programs. Commenters stated that currently there is no consideration by FEMA of the disasters that are paid for by States and that States should not be penalized for having a program that assists its citizens during the time it takes for PDAs to be completed and a major disaster declaration authorized. FEMA agrees with the comments received from emergency managers that any efforts or programs to help citizens by a State should be considered. As discussed below in the "Planning After Prior Disasters" factor, FEMA proposes to include consideration of any planning and disaster relief programs a State establishes after a prior disaster because States are ultimately responsible for the well-being of their citizens and therefore should continuously evaluate and improve their disaster planning and relief programs based on lessons learned from previous disasters.

IV. Discussion of the Proposed Rule

This rule proposes to implement Section 1109 of SRIA, which requires FEMA to revise and update through rulemaking the Individual Assistance factors that are used to make a major disaster recommendation to the President. States are not required to provide information on every single

factor listed below; the amount of information and data provided by each State is voluntary. However, the failure of a State to provide sufficient evidence that supplemental Federal assistance is necessary may result in a delay or possibly denial of a request for a major disaster declaration authorizing IA.

As is currently the practice, FEMA will continue to use a myriad of factors and data to formulate its recommendations to the President on major disaster declarations that authorize IA. No single data point or factor would determine on its own FEMA's ultimate recommendation nor would any single factor necessarily affect the President's ultimate determination of whether a major disaster declaration authorizing IA is warranted. The proposed factors would not limit the President's discretion regarding major disaster declarations. FEMA reviewed the current factors and proposes to revise the current factors as follows.

A. 44 CFR 206.48—Paragraph (b)(1) State Fiscal Capacity and Resource Availability

FEMA is proposing to add at 44 CFR 206.48(b)(1) a factor entitled "State Fiscal Capacity and Resource Availability." The factors discussed below will be used by FEMA to evaluate a State's fiscal capacity to respond to a disaster as well as a State's available resources that can or have been committed to the disaster recovery process.

Fiscal Capacity. FEMA is proposing to evaluate a State's fiscal capacity to respond to and recover from a disaster in 44 CFR 206.48(b)(1)(i)(A)-(D). As discussed above, major disaster declarations are based upon a finding that the event is of such severity and magnitude that an effective response is beyond the capabilities of the State and affected local governments. Economic conditions of the State and affected local governments are clearly relevant to such a finding. However, the current regulations do not specifically include consideration of economic factors that could affect a State's capability to respond to or recover from a disaster. The proposed data points will help FEMA evaluate through independently calculated data whether a State is financially overwhelmed and unable to adequately respond to a disaster.

In addition, the United States Government Accountability Office (GAO) has suggested in multiple reports⁸ that FEMA should incorporate

⁸United States Government Accountability Office, FEDERAL DISASTER ASSISTANCE:

States' fiscal capacity into its considerations for recommendations on disaster declarations to the President. The GAO reports have historically focused on fiscal capacity in FEMA's Public Assistance (PA) factor criteria, but changes to the PA criteria are outside the scope of this proposed rule. FEMA believes that the same principle applies to IA and PA, in that there is a need to assess a State's capacity to respond and recover from a disaster on its own when determining whether a major disaster declaration is warranted because Federal assistance is supplemental. Each State's capacity to respond and recover varies based on the circumstances of the disaster and the State's resources.

FEMA therefore proposes to include in 44 CFR 206.48(b)(1)(i)(A)–(C) the following three factors which will help evaluate a State and local jurisdiction's fiscal capacity: (A) The Total Taxable Resources (TTR) of the State,⁹ (B) the Gross Domestic Product (GDP) by State,¹⁰ (C) and the Per Capita Personal Income by Local Area. FEMA anticipates that these data points are readily available so that the State can discuss the data points in their request for a major disaster declaration. These publicly available data points, calculated by third-party government agencies, will allow FEMA to use standardized data to evaluate the economic capability of a State to effectively respond to an event.

Improved Criteria Needed to Assess a Jurisdiction's Capability to Respond and Recover on Its Own, GAO-12-838, September 2012. Available at: <http://www.gao.gov/assets/650/648162.pdf>. United States Government Accountability Office, DISASTER ASSISTANCE: Improvement Needed in Disaster Declaration Criteria and Eligibility Assurance Procedures, August 2001. Available at: <http://www.gao.gov/assets/240/232622.pdf>.

⁹ For a more detailed discussion of the methodology estimating the total taxable resources (TTR) of the State, please refer to Dep't of the Treasury, Treasury Methodology for Estimating Total Taxable Resources (TTR) (last revised Nov. 2002), <http://www.treasury.gov/resource-center/economic-policy/Documents/nmpubsum.pdf>. This document is also available in the docket for this rulemaking. The data on TTR by State is available at <http://www.treasury.gov/resource-center/economic-policy/taxable-resources/Pages/Total-Taxable-Resources.aspx>. FEMA provides this Web site for reference purposes, the Web site may change based on U.S. Treasury's future actions, and FEMA will adjust its use of the Web page and data as necessary.

¹⁰ Gross Domestic Product of the State was formerly referred to as Gross State Product. For a more detailed discussion of the methodology estimating the Gross Domestic Product of the State, please refer to <http://bea.gov/regional/pdf/gsp/GDPState.pdf>. This document is also available in the docket for this rulemaking. An example of GDP by State is available at http://www.bea.gov/newsreleases/regional/gdp_state/gsp_newsrelease.htm; however, FEMA will use updated data as new information is published.

The TTR of the State is an annual estimate of the relative fiscal capacity of a State, calculated by the U.S. Department of Treasury. TTR is defined as the unduplicated sum of the income flows produced within a State and the income flows, received by its residents, which a State could potentially tax. Calculation of the TTR is based on the GDP by State and additional accounting for resident earnings (wages, salaries, proprietor's income, etc.) from out-of-state, and resident dividend and interest income, as well as reduction for components that are presumed not taxable by States (employee and employer contributions to social insurance, federal indirect business taxes, federal civilian enterprises surplus/deficit). While TTR does not consider the actual fiscal choices made by the States, it does reflect their potential resources. Increases or decreases in TTR could indicate a strengthening or declining State economy for FEMA to consider when making a determination of the State's capacity. In summary, TTR is a flow concept, a comprehensive measure of all the income flows a State can potentially tax. TTR data is updated annually with a two year lag in the data.

The GDP by State is calculated by the BEA.¹¹ GDP by State estimates are measured as the sum of the distributions by industry and state of the components of gross domestic income which is the sum of the costs incurred and incomes earned in the production of GDP. Currently, TTR is only provided for the fifty States and the District of Columbia,¹² but not the territories; but GDP by State includes calculations for U.S. territories.¹³ FEMA would use GDP by State primarily as an alternative fiscal capacity measure when the TTR of an area is unavailable. GDP by State may also be used by a State when their TTR is inaccurate due to the two year lag in TTR data. It is possible that a State's TTR data could be strong or trending upwards when in fact recent events may have caused a significant drop in the State fiscal capacity that is not yet reflected. This significant drop could be caused by, for instance, a

¹¹ GDP by State is a component of the TTR calculation.

¹² The District of Columbia's TTR does not include income earned by out-of-state commuters. Since the District of Columbia is proscribed by Federal law from taxing the earnings of commuters from outside its borders, the U.S. Treasury has subtracted the earnings of non-residents (commuter income).

¹³ GDP by State data is currently available from the BEA for the following territories: Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The U.S. Census publishes GDP for Puerto Rico.

previous disaster or a financial downturn. Additionally, if a disaster had a significant amount of damages and impacts, so much so that it could have a major impact on the real or actual TTR, FEMA would likely recommend granting IA, assuming the damages were not covered by home, property, or flood insurance and IA assistance would not duplicate benefits. TTR is one data point along with numerous others and will not on its own determine FEMA's recommendation. States also have the opportunity, as they have in the past, to tell FEMA how their economy is impacted by the disaster and previous disasters. The State may also present, and FEMA will evaluate, the GDP trend in addition to simply the TTR data.

Generally, FEMA assumes a State with a low TTR may have a lower threshold for requiring supplemental Federal assistance than a State with a higher TTR because its economy may not be as resilient against the increased financial burdens that are attributed to a large disaster. FEMA assumes territories with lower GDP may have a relatively lower threshold for requiring Federal assistance. While a higher TTR or GDP are indicative of greater fiscal capability, FEMA recognizes that there are disasters that are so large or so destructive as to overwhelm even the most fiscally capable States.

Per capita personal income by local area is calculated by the BEA,¹⁴ and is the personal income of the residents of a given area divided by the resident population of the area. BEA uses the Census Bureau's annual midyear population estimates when computing the per capita personal income. FEMA anticipates using per capita personal income by local area as a measure to better assess the need for supplemental Federal assistance within each local area. A local area with a relatively low per capita personal income that is affected by a disaster may have a lower threshold for requiring supplemental Federal assistance. Local governments in areas with low per capita personal income will typically have lower tax bases and therefore may have fewer resources available to help local residents impacted by a disaster, which may indicate a lower threshold for requiring supplemental Federal assistance. Per capita personal income by local area when considered holistically with TTR (and when

¹⁴ Data on per capita personal income is available on the BEA's "Local Areas Personal Income & Employment" Table CA1. FEMA may need to update this source if the BEA provides a new table for per capita personal income, and it is provided here for clarification purposes only.

appropriate GDP by State) will help to identify areas of concentrated need at the micro local area and individual level in addition to the macro State level.

FEMA also proposes to include at 44 CFR 206.48(b)(1)(i)(D) a factor entitled "Other Factors." "Other Factors" is included to explicitly prompt the State to raise and discuss any other additional factors related to the State's fiscal capacity, *i.e.*, burdens on a State treasury or a State's inability to collect funds. This factor will encourage a State to provide an explanation of a State's fiscal capacity that might not be captured or accurately reflected in the above factors. A State may have an extraordinary fiscal circumstance that is not reflected in the above factors and FEMA encourages the State to discuss the circumstances. For example, a hurricane may cause extensive damage in a coastal area and negatively impact tourism, which in turn, will have a negative impact on the tax base and fiscal capacity.

Resource Availability. FEMA proposes to include at 44 CFR 206.48(b)(1)(ii) a factor entitled "Resource Availability." Federal disaster assistance is supplemental in nature. FEMA's current regulations do not provide for the level of granularity and detail for FEMA to fully evaluate what and where the resource shortfalls are for a community and State that was affected by a disaster. "Resource Availability" will be an evaluation of the disaster assistance resources available from State, Tribal, and local governments as well as non-governmental organizations and the private sector so that FEMA can determine where, if any, gaps in resources exist. This factor also provides for consideration of those circumstances that may prevent a State from having sufficient resources to devote to the disaster recovery process. Supplemental Federal assistance under the Stafford Act is not warranted or necessary if a State's disaster-caused needs can be met by the available resources provided by a State, Tribal, local governments, non-governmental organizations, or the private sector.

FEMA is proposing to include at 44 CFR 206.48(b)(1)(ii)(A)–(D) four factors that will enable FEMA to fully evaluate a State's available resources post disaster: (1) State, Tribal, and local government, Non-Governmental Organizations (NGO), and Private Sector Activity; (2) Cumulative Effect of Recent Disasters; (3) State Services; and (4) Planning After Prior Disasters.

In current regulations, FEMA evaluates voluntary agency assistance to determine the need for assistance to

individuals under the Stafford Act. 44 CFR 206.48(b)(4). While the current factor's title is "Voluntary agency assistance," both State and local government programs are included. FEMA is clarifying the inclusion of State and local government programs and is also expanding 44 CFR 206.48(b)(1)(ii)(A) to include private sector assistance. FEMA is also specifying Tribal government assistance, which was previously considered under local government programs. FEMA is proposing this as a factor because the level of assistance available to disaster survivors from State, Tribal, and local government, NGOs, and the private sector, may offset a need or reveal an increased need for supplemental assistance. Assistance provided by State, Tribal, and local government, NGOs, and the private sector can include but is not limited to Emergency Management Assistance Compact (EMAC) resources, sheltering, housing programs, feeding, mental health services, child care, elder care, reunification services, clean up kits, blankets and cots, financial assistance, and other donations.

This factor is an attempt to include the "Whole Community" approach to emergency management that reinforces the fact that FEMA is only one part of our nation's emergency management team; that FEMA must evaluate all of the resources of the collective team in preparing for, protecting against, responding to, recovering from and mitigating against all hazards; and that collectively we must meet the needs of the entire community in each of these areas. FEMA fully recognizes that a government-centric approach to emergency management is not enough to meet the challenges posed by a catastrophic incident. When the community is engaged in emergency management, it becomes empowered to identify its needs and the existing resources that may be used to address them. Collectively, we can determine the best ways to organize and strengthen community assets, capacities, and interests. This allows us, as a nation, to expand our reach and deliver services more efficiently and cost effectively to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards. The "Whole Community" approach is an ongoing component of the nation's larger, coordinated effort to enhance emergency planning and strengthen the nation's overall level of preparedness.

FEMA proposes to add a new factor "Cumulative Effect of Recent Disasters," at 44 CFR 206.48(b)(1)(ii)(B), to evaluate

a State's disaster history, both Presidential (public and individual assistance) and gubernatorial disaster declarations, for the previous 24-month period. FEMA is particularly interested in information from a State highlighting any disasters that have occurred within the State's current budget cycle. FEMA is proposing this as a factor because multiple disasters in a 24-month period, and particularly within one State budget cycle, may significantly strain a State budget and reduce the State's capability to adequately respond to and recover from a disaster without supplemental Federal assistance. In addition, pursuant to FEMA's regulations, at 44 CFR 206.48(a)(5), in evaluating the need for assistance under the Public Assistance program, FEMA considers the disaster history of the State for the last 12-month period. FEMA is requesting 24 months of State disaster history data because it closely aligns with the length of time for IA programs. For example, IHP assistance is available for 18 months and DCMP is available for 24 months from the date of a major disaster declaration. A State with an open disaster period that is affected by another disaster might have various unique issues related to recovery and the compounded effects of two disasters within a short amount of time. Review of disaster activity occurring within the past 24 months will help to capture any ongoing disaster activity where individuals may still be receiving IHP assistance. If the length of time were limited to only 12 months, this factor might not identify that the State currently has an open major disaster declaration where individuals are potentially still receiving FEMA IA assistance. This time period will also align with most State government fiscal cycles, which are typically one or two years. An unanticipated number of disasters within a fiscal cycle may contribute to budget shortfalls that may render a State less able to respond to an event.

FEMA is proposing a new factor, "State Services," at 44 CFR 206.48(b)(1)(ii)(C). Under this factor, FEMA would evaluate information regarding any circumstances that prevent a State from having the resources to provide sufficient services to its citizens. FEMA strongly believes that it is important for a State to have pre-identified funding sources or sufficient disaster relief funds or programs that can be utilized to assist its citizens after a disaster. A State requesting a major disaster declaration should address the reasons why the State does not have sufficient funds, or

why the funding sources are insufficient to meet the needs of its citizens.

Finally, under the “Resource Availability” factor, FEMA is proposing to consider a State’s “Planning After Prior Disasters,” at 44 CFR 206.48(b)(1)(ii)(D). Federal disaster assistance is supplemental and is not intended to take the place of State disaster assistance programs. States are strongly encouraged to develop and continuously improve their own disaster assistance programs. For this factor, States should identify any new and existing individual assistance programs as well as any improvements to existing individual assistance programs made as a result of previous disasters. States that continually fail to address limitations or shortfalls identified by FEMA or the State after previous events will receive negative consideration under this factor. FEMA is proposing this as a factor because States are ultimately responsible for the well-being of their citizens and therefore should continuously evaluate and improve their disaster planning and relief programs based on lessons learned from previous disasters.

B. 44 CFR 206.48—Paragraph (b)(2) Uninsured Home and Personal Property Losses

Under FEMA’s current regulations, FEMA evaluates the concentration of damages to individuals. 44 CFR 206.48(b)(1). FEMA also considers the amount of insurance coverage pursuant to 44 CFR 206.48(b)(5). FEMA is proposing to incorporate both of the current factors, as well as additional information collected during the PDA process, into a new factor entitled “Uninsured Home and Personal Property Losses” in a new 44 CFR 206.48(b)(2). As described above in section (III)(A)(1) of the Background section, FEMA and the State participate in the joint PDA process, which includes an examination of the extent of damage to individual residences. The PDA data points help to illustrate the extent of damage that a community has sustained and help FEMA estimate the probable grant assistance under the Individuals and Households Program. The proposed data points save FEMA time when evaluating a major disaster declaration request because the requested data has already been evaluated and validated by FEMA during the joint PDA process. FEMA currently collects this information via the joint PDA process and uses them when evaluating requests for major

disaster declaration.¹⁵ This proposed factor will more accurately describe the information collected and evaluated during joint PDAs.

The first proposed data point is the cause of damage in a new paragraph 44 CFR 206.48(b)(2)(i). FEMA is requesting this information in part because it is directly relates to insurance coverage. The cause of disaster damage refers to the peril that caused the disaster damage such as a tornado or wind driven rain. Insurance policies typically only cover damage resulting from a specific peril or perils. FEMA is legally prohibited from duplicating insurance proceeds when providing disaster assistance and must know the level of insurance coverage and the cause of the damage to estimate the potential amount of Federal IA available.

The second proposed data point is information on the jurisdictions impacted and the concentration of damages in a new paragraph 44 CFR 206.48(b)(2)(ii). FEMA is requesting this information because it will highlight the counties within a State that may require IA as well as whether the damages were in one concentrated area of the State or widespread. This information will be gathered during the PDA process by either the damage assessment teams or via geographic information system (GIS) data. IA is typically authorized based on county or parish jurisdictional boundaries.

The third proposed data point is the number of homes impacted and degree of damage in a new paragraph 44 CFR 206.48(b)(2)(iii). Degree of damage refers to the extent of disaster damage and its impact on the habitability of a home. FEMA is requesting this information because it illustrates how a community was affected and what types and the extent of IA that may be needed for the community. This information is typically given at both the county or parish jurisdictional level and the State wide level.

The fourth proposed data point is the estimated cost of assistance in a new paragraph 44 CFR 206.48(b)(2)(iv). The estimated cost of assistance is typically generated by the joint FEMA-State PDA and is already currently collected in FEMA’s current declarations process. The estimated cost of damage will help FEMA gather information about the cost of a disaster and the potential amount of FEMA assistance that would be awarded. This data point is often determined using information obtained

from the other data points outlined in this factor. This data point is important because it will capture the probable grant assistance that will be awarded for personal property in addition to grant assistance for housing.

The fifth proposed data point is information on the homeownership rate of impacted homes in a new paragraph 44 CFR 206.48(b)(2)(v). This factor is an estimated rate of the homeownership of impacted homes in the disaster-affected area. FEMA may provide assistance for real property repair or replacement to homeowners for their primary residence and rental assistance to homeowners or renters; therefore, it is important to know homeownership rates in order to estimate probable assistance.

The sixth proposed data point is information on the percentage of affected households with insurance coverage appropriate to the peril in a new paragraph 44 CFR 206.48(b)(2)(vi). FEMA is requesting this information because FEMA will consider the percentage of affected households with insurance coverage as part of the evaluation of whether the IHP is necessary and to assist in determining probable grant assistance. Insurance appropriate to the peril is, for example, if the cause of the damage is wind and the homeowner has homeowner’s insurance, then the homeowner has insurance appropriate to the peril. If the homeowner has homeowner’s insurance, but no flood insurance, and the cause of the damage is flooding, then the homeowner does not have insurance appropriate to the peril. If a homeowner has sufficient and appropriate insurance to the peril, Federal assistance may be limited to ONA, CCP, DCMP, or DUA programs because the Stafford Act prohibits FEMA from duplicating benefits received from any other source, including insurance proceeds. The State should attempt to provide this information through the State insurance commissioner or office and other appropriate sources. FEMA will verify the data using the best analysis methods available. FEMA currently utilizes National Flood Insurance Program (NFIP) data to determine insurance penetration rates for flood damages and Census data to determine homeowners’ insurance coverage percentages. Since insurance coverage is not collected during the Census, the percentage of owner-occupied homes with a mortgage is used to determine an insurance penetration rate, due to assumption that a home with a mortgage would require home insurance coverage. FEMA is pursuing additional resources beyond NFIP and Census data to verify

¹⁵ Preliminary Damage Assessment for Individual Assistance Operations Manual (9327.2). Available at: <http://www.fema.gov/media-library/assets/documents/29569>.

insurance penetration rates in order to have the most accurate insurance information available. As previously mentioned in Section III(C)(9), FEMA is requesting that stakeholders and the public provide information and suggestions on potential sources of data for the most accurate insurance information. FEMA will consider any suggestions during the development of the final rule.

Finally, the seventh proposed data point is any other relevant preliminary damage assessment data in a new paragraph 44 CFR 206.48(b)(2)(vii). FEMA is proposing this factor to explicitly prompt the State to discuss any other damage assessment information that was gathered during the joint FEMA-State PDA that the State believes demonstrates that an effective response is beyond the capability of the State and affected local governments and that supplemental Federal assistance for individuals is appropriate.

C. 44 CFR 206.48—Paragraph (b)(3) Disaster Impacted Population Profile

In FEMA's current regulations at 44 CFR 206.48(b)(3), FEMA considers special populations in evaluating the need for assistance to individuals under the Stafford Act. FEMA proposes to expand on this current factor, in the proposed factor "Disaster Impacted Population Profile" at a revised 44 CFR 206.48(b)(3). Currently, in the "special populations" factor FEMA considers demographic information regarding low income, elderly, or unemployed populations that are affected by a major disaster because those populations may have a greater need for assistance. 44 CFR 206.48(b)(3). FEMA also considers whether a State has any American Indian or Alaskan Native Tribal populations. 44 CFR 206.48(b)(3).

FEMA is proposing to consider additional demographic data points related to the disaster impacted community. This information will help FEMA to identify the specific issues or obstacles that a community may face in their disaster recovery. FEMA will consider the following U.S. Census and other Federal agency¹⁶ demographic

data points¹⁷ in making a recommendation for IA under a major disaster declaration: (1) The percentage of the population for whom poverty status is determined; (2) the percentage of the population already receiving government assistance, such as Supplemental Security Income and Supplemental Nutrition Assistance Program benefits; (3) the pre-disaster unemployment rate; (4) the percentage of the population that is 65 years or older; (5) the percentage of the population 18 years or younger; (6) the percentage of the population with a disability; and (7) the percentage of the population who speak a language other than English and speak English less than "very well." In addition, FEMA will continue to consider any unique considerations regarding American Indian and Alaskan Native Tribal populations raised in the State's request for a major disaster declaration, even if such considerations are not reflected in the U.S. Census Bureau data. These data points are readily available so that the State can discuss the data points in its request for a major disaster declaration.

The proposed population demographic data points are relevant to all of FEMA's IA programs and are a valuable source of information to determine if specific programs are

www.bls.gov/web/laus/laumstrk.htm and http://www.bls.gov/lau/#cntyaa. Data on county populations of "65 or Older" and "18 or Younger" data comes from the ACS using the American FactFinder, Advanced Search, Geographies: "All Counties within the United States," Topics: DP05, 5-year estimates. Data on populations with a disability comes from the ACS, American FactFinder, Advanced Search, Geographies: "All Counties within the United States," Topics: S1810, 3-year estimates. Data on "percent of population who speaks English less than very well" comes from the ACS, American FactFinder, Advanced Search, Geographies: "All Counties in the United States," Topics: B06007, 5-year estimates. Data on American Indian and Alaska Native populations comes from the ACS, American FactFinder, Advanced Search, Geographies: "All Counties within the United States," Topics: DP05, 5-year estimates. FEMA may update these sources to account for future improvement and changes in the U.S. Census, BLS, BEA, and Treasury data reporting, and the sources are provided here for example.

¹⁷ For definitions related to demographic data points, please refer to the associated organizations Web sites. For example, refer to U.S. Census Small Area Income and Poverty Estimates definitions at <http://www.census.gov/did/www/saiepe/methods/statecounty/20102012county.html> for percentage of the population for whom poverty status is determined. For a definition of the pre-disaster unemployment rate, refer to Bureau of Labor Statics at <http://www.bls.gov/bls/glossary.htm> and search for the term "unemployment rate". The U.S. Census glossary at <http://www.census.gov/glossary> and American Community Survey also provide definitions related to demographic data points including the following terms: Assistance and Subsidies, Age, Disability, Language Spoken at Home, and Ability to Speak English.

needed after a disaster. For example, demographic information revealing a large number of low income, unemployed, or elderly populations in a disaster area could indicate a need for supplemental Federal assistance because those populations may not have a large amount of disposable income or qualify for a Small Business Administration (SBA) disaster loan. With respect to demographic information that reveals a large non-English speaking population, this will help FEMA to structure their outreach efforts to ensure that any messaging efforts are in the appropriate languages.

D. 44 CFR 206.48—Paragraph (b)(4) Impact to Community Infrastructure

In FEMA's current regulations, at 44 CFR 206.48(b), FEMA considers the degree of trauma to a State and to communities when evaluating a State's need for IA. FEMA considers conditions that might cause trauma, such as large scale disruption of normal community functions and services and emergency needs such as extended or widespread loss of power or water. 44 CFR 206.48(b)(2)(ii) and (iii). SRIA specifically identified trauma as a factor that required clarification as to the specific conditions or losses that contribute to trauma. FEMA proposes to examine what was previously identified as part of the "trauma" factor by identifying and evaluating several more objective factors which contribute to the level of trauma caused by a disaster.¹⁸ The "Impact to Community Infrastructure" factor at a proposed new 44 CFR 206.48(b)(4) includes several considerations which relate to the level of trauma, as well as considerations that shed light on a community's ability to recover from a disaster. This factor has three components: (1) Life-Saving and Life-Sustaining Services; (2) Essential Community Services; and (3) Transportation Infrastructure and Utilities. Significant levels of damage, disruption, or destruction to any or all of these components may hinder the ability of individuals and families to make a timely recovery, be indicative of higher levels of trauma, and suggest an increased need for supplemental Federal assistance—for example Other Needs Assistance, Crisis Counseling Program, or Disaster Case Management Program. FEMA anticipates information on the three components will be provided by the State.

¹⁸ FEMA is also providing additional clarity on what constituted trauma in the Casualties factor which can be found in the proposed new 44 CFR 206.48(b)(5) and is discussed below.

¹⁶ Poverty data comes from the U.S. Census Small Area Estimate Branch, "Poverty and Median Income Estimates for Counties." Supplemental Nutrition Assistance Program data is from the U.S. Census's American Community Survey (ACS) using the American FactFinder, Advanced Search, Geographies: "All Counties within the United States," Topics: S2201, 5-year estimates. Supplemental Security Income data comes from ACS using the American FactFinder, Advanced Search, Geographies: "All Counties within the United States," Topics: B19056, 5-year estimates. The unemployment data at the state and county level are respectively available at <http://>

FEMA is requesting information on an activity or disruption that lasts for more than 72 hours for each of the below components. As a general matter members of the public should be prepared to potentially be on their own at least 72 hours after a disaster.¹⁹ It may take FEMA up to 72 hours to assess and mobilize Federal assets to help a State that is overwhelmed by a disaster. In addition, preparing for at least this amount of time will allow emergency responders to focus on those individuals requiring more immediate assistance.

Life-Saving and Life-Sustaining Services. FEMA is proposing that a State provide information regarding the impact of the disaster on life-saving and life-sustaining services for a period of greater than 72 hours in a new paragraph 44 CFR 206.48(b)(4)(i). FEMA is specifically seeking information on services such as, but not limited to, police, fire/EMS, hospital/medical, sewage, and water treatment services because prolonged disruption may affect the viability of a community and necessitate survivor relocation. The effects of a disaster will increase the demand for life-saving and life-sustaining services and necessitate a more robust response. Significant or extended disruptions to these services will hinder a community's ability to recover from a disaster.

Life-saving services are services that provide an essential community function that, if interrupted, will affect public health and safety in a community. Some typical examples of life-saving services data that FEMA is requesting are whether emergency medical services such as ambulances, fire services, police services, or hospital services are affected by the disaster. Life-sustaining services are services that are required to support life and well-being within a community and are necessary for the community to function as normal. Some typical examples of life-sustaining services data that FEMA is requesting are whether any community healthcare programs, assistance to homebound individuals such as Meals on Wheels, or food providers such as grocery stores or restaurants are affected by the disaster.

Essential Community Services. FEMA is proposing that a State provide

information regarding the impact on essential community services for a period greater than 72 hours in a new paragraph 44 CFR 206.48(b)(4)(ii). Essential community services are services that improve the quality of life for a person in a community but do not sustain a person's life. FEMA is requesting information on the impact of the disaster on essential community services such as, but not limited to, schools, social services programs and providers, child care, and eldercare. Information on the impact of the disaster on essential community services can include, for instance, the number of schools closed, whether any social service programs or providers such as Meals on Wheels were affected by the disaster, and the number of providers of child care or eldercare in the community that closed. Significant or extended disruptions to these services will hinder the affected community's ability to recover from a disaster.

Transportation Infrastructure and Utilities. FEMA is proposing that the State provide information regarding the impact of the disaster on transportation infrastructure and utilities in a new paragraph 44 CFR 206.48(b)(4)(iii). Specifically, FEMA is seeking information on the number of roads, bridges, tunnels, and public transit closures and utility outages of water, power, sewage, and gas that last longer than 72 hours. Transportation infrastructure or utility disruptions can render housing uninhabitable or inaccessible for disaster survivors, affect the delivery of life sustaining commodities, provision of emergency services, ability to shelter in place, and efforts to rebuild. Significant or extended disruptions to this infrastructure will hinder the affected community's ability to recover from a disaster.

E. 44 CFR 206.48—Paragraph (b)(5) Casualties

In FEMA's current regulations, at 44 CFR 206.48(b)(2)(i), FEMA evaluates the degree of trauma to a State and to communities, including consideration of "large numbers of injuries and deaths." As discussed above, SRIA specifically directed FEMA to clarify the factor related to trauma; the proposed changes to the Impact to Community Infrastructure factor, described above, represent part of this effort.

In addition, FEMA is proposing in a new 44 CFR 206.48(b)(5) that States submit information on the number of individuals who are missing, injured, or deceased due to a disaster. FEMA believes that this information may

indicate a heightened need for supplemental Federal assistance because casualties are clearly indicative of the level of trauma in the affected area. Moreover, each of the proposed data points link to one or more types of assistance under IA programs. The estimated number of missing individuals can highlight how traumatic an event was for a community and indicate a potential need for crisis counseling. This information may also be an indicator that additional injured or deceased individuals may be discovered during the course of the disaster recovery. The estimated number of injured individuals may also indicate a need for crisis counseling as well as medical or dental assistance under the ONA provision of the Individuals and Households Program. The estimated number of deceased individuals may indicate a need for crisis counseling as well as funeral assistance under ONA. These proposed data points are typically provided by the State already.

F. 44 CFR 206.48—Paragraph (b)(6) Disaster Related Unemployment

In FEMA's current regulations, FEMA considers whether "special populations," such as the unemployed, are affected by the disaster and whether they may have a greater need for assistance in 44 CFR 206.48(b)(3). As discussed above, FEMA is proposing to add a "Disaster Impacted Population Profile" factor, which incorporates consideration of a number of special populations, including the percentage of low-income, unemployed, and elderly individuals within the population.

In addition, FEMA is proposing a new factor, "Disaster Related Unemployment," in a new paragraph 44 CFR 206.48(b)(6) that will evaluate unemployment in a different manner than FEMA's current regulations. FEMA's current regulations are focused primarily on those that are unemployed prior to the disaster. In this new factor, FEMA will seek to identify individuals that may have lost work or become unemployed as a result of the disaster.

The Disaster Unemployment Assistance program (DUA), operation of which has been delegated to the Department of Labor, 44 CFR 206.141, provides unemployment benefits and re-employment services to individuals who have become unemployed as a result of a major disaster and who are not eligible for regular State unemployment insurance. The types of workers who typically receive such assistance are self-employed, service industry workers, and seasonal workers such as those employed in tourism, fishing, or agriculture industries. In

¹⁹ See the following Web sites as examples: The FEMA run national public service advertising (PSA) campaign Web site <http://www.ready.gov/build-a-kit>; the Texas Division of Emergency Management Web site <http://www.txdps.state.tx.us/dem/Preparedness/emerSupplyKits.htm>; the San Francisco Department of Emergency Management Web site <http://www.sf72.org/home>; and the New York City Office of Emergency Management Web site http://www.nyc.gov/html/oem/html/get_prepared/supplies.shtml.

order to fully evaluate whether or not DUA is appropriate, FEMA is requesting that a State provide information on the estimated number of disaster survivors who lost work or became unemployed due to a disaster and who do not qualify for standard unemployment insurance.

In addition, FEMA is requesting that a State provide information regarding any major employers that are affected in the area by the disaster because it may highlight an additional need for the community in their recovery efforts. When a major employer in a community is affected by a disaster, it can signal to FEMA that the community will have a prolonged recovery because a large amount of individuals may be out of work and unable to support their own recovery efforts. This may further indicate need for DUA and other IA programs. FEMA anticipates that the State will provide this information.

G. Principal Factors for Evaluating the Need for the Individuals and Households Program

FEMA is proposing that the principal factors it will consider in evaluation of any major disaster declaration request for IHP will be the fiscal capacity of the requesting State (44 CFR 206.48(b)(1)(i)) and the uninsured home and personal property losses (44 CFR 206.46(b)(2)). As discussed above, major disaster declarations are based upon a finding that the event is of such severity and magnitude that effective response and recovery is beyond the capabilities of the State and affected local governments. IHP provides grants and direct assistance to eligible disaster survivors who have necessary and serious needs that they are unable to meet through other means. In order to determine the need for IHP, it is important to evaluate the total estimated need for such assistance resulting from

the event and to compare that estimated need to the fiscal capability of the requesting State.

FEMA evaluated major disaster declaration requests including IHP between January 2008 and July 2013 and determined that the uninsured home and personal property losses' estimated cost of assistance was an important factor driving whether a major disaster declaration authorizing IHP was declared by the President. FEMA found that 97% of requests involving estimated costs of assistance that were equal to or greater than \$7.5 million were granted major disaster declarations authorizing IHP, while only 6% of requests involving estimated costs of assistance equal to or less than \$1.5 million were granted. Requests falling between those numbers were much more uncertain, with approximately 44% granted, as reflected in Table 1.

TABLE 1—ESTIMATED COST OF ASSISTANCE TO DECLARATION DECISION COMPARATIVE

Dollar amount of estimated costs of assistance	Number of disaster requests	Number of disasters declared	Percentage of disasters declared
\$7.5 million or more	32	31	97
\$1.5 million to \$7.5 million	87	38	44
\$1.5 million or less	34	2	6

* Based on major disaster declaration requests including IHP between January 2008 and July 2013.

Similarly, FEMA found that the ratio of IA Cost to Capacity (ICC),²⁰ which is the estimated cost of IA divided by the State's TTR in millions, was particularly indicative of the declaration result above and below certain levels. FEMA conducted a review of 153²¹ major disaster declaration requests that included IA that were submitted between January 2008 to July 2013 to determine if there would be any impact from using TTR in assessing a State's need for a major disaster declaration authorizing IA. Each State request included an estimate of the costs from the damages attributed to the disaster event. FEMA retrieved the TTR per State at the time of each request. For each request, FEMA divided the estimated cost by the State TTR in millions. For example, if a State

estimated \$2,000,000 in IA costs and the State's TTR was \$30,000,000,000, FEMA divided \$30,000,000,000 by \$1,000,000 to get the State's TTR in millions which is \$30,000. FEMA then divided \$2,000,000 by \$30,000 to get the ratio of IA Cost to Capacity (ICC) of 66.7.

Based on the ICC calculation for all 153 State requests, there is a general trend that shows the greater the ICC ratio for a major disaster declaration request that included IA, especially above 25, the more likely the request would be granted. Additionally, the lower the ICC ratio for a major disaster declaration request that included IA, especially below 10, the more likely the request was denied. Major disaster declaration requests for IA with an ICC greater than 25 were granted 95% of the time, while requests with an ICC below 10 were granted only 7% of the time. Requests with ICCs falling in between 10 and 25 were granted approximately half the time.

FEMA is not proposing to use these numbers as a hard "threshold" or incorporate them into regulation because there is no one factor required to receive a major disaster declaration authorizing IA and we want to preserve the President and FEMA's discretion to

consider the circumstances of each event. Moreover, FEMA recognizes that this kind of analysis can help identify trends and ensure consistent decisionmaking over time, but does not always provide the full scope of information necessary for FEMA to make an informed recommendation.

However, FEMA believes that providing these types of trends and historic data is important to help guide States in their consideration of whether or not an event might warrant a major disaster declaration authorizing IA. The trends and historical data will also help guide State planning with respect to what level of IHP damage they should expect to handle without supplemental Federal assistance. This type of planning guidance is consistent with the original intent behind the table currently in 44 CFR 206.48(b)(6). As discussed above, the data in that table eventually became out of date and it no longer has any utility as a planning tool.

In order to ensure that the most useful and up to date data and information are available to States for guidance and planning purposes, FEMA proposes to compile and periodically publish aggregate PDA data for major disaster requests, including IHP. Currently,

²⁰ See the discussion in V. Regulatory Analysis; A. Executive Order 12866; 5. Impacts to Costs, Benefits, and Transfer Payments; d. Transfer Payments, for more detailed explanation of ICC and these findings.

²¹ For the analysis on TTR, FEMA excluded disaster declaration requests that did not include a request for IA. FEMA also excluded duplicate requests, U.S. territories' requests (because there is no TTR data available), requests without summaries of the PDA data or with insufficient data, and requests that involved an expedited decision.

FEMA publishes Preliminary Damage Assessment Reports²² for every request for a major disaster declaration. These reports lay out the PDA data that was provided in the Governor’s request and indicate whether or not the request resulted in a declaration. Upon finalization of new IA declaration factors, FEMA intends to continue publishing these reports with new declaration factors. In addition, FEMA intends to periodically publish the aggregate data from these reports in a format that will assist States in evaluating the likelihood of receiving a major disaster declaration for a specific event and for planning for future events. By publishing this information in periodic guidance, and not codifying it in regulation, FEMA would ensure that the data remains timely and useful.

In addition to publishing PDA data, FEMA intends to publish guidance that provides clarity to States on how FEMA would utilize the new proposed factors when it evaluates major disaster declaration requests that include IA. This guidance will provide additional detail regarding analysis of the principal factors as well as other factors identified in the proposed rule. FEMA intends to publish the guidance for public comment to this rulemaking docket, and FEMA will develop the final rule and guidance as a pair taking into consideration all comments received on the NPRM and guidance. Over time, FEMA may update this guidance as necessary. The provision of more specific details regarding evaluation of

the specific factors through guidance will allow FEMA to be more nimble in adapting to changing circumstances or changing priorities, while also creating an important transparency benefit for State and local governments.

It is important to note that certain disasters may present unique circumstances which cannot be anticipated by regulation or policy guidance, as such States may submit, and FEMA may evaluate, all relevant information. In addition, FEMA only evaluates requests and makes recommendations to the President. The sole discretion to approve or deny any request for major disaster declaration request lies with the President.

V. Regulatory Analysis

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

1. Executive Summary & A-4 Accounting Statement

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules,

and of promoting flexibility. This rule has been designated a “significant regulatory action” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

This proposed rule would impose a cost burden of \$3,752 in the first year of implementation and \$1,609 annually for subsequent years. During the ten year period following the final rule’s effective date, the total cost would be \$18,233 undiscounted. The ten year present value total cost would be \$15,806 and \$13,302 if discounted at three and seven percent, respectively. The small annualized cost of the proposed rule would be \$1,853 at three percent and \$1,894 at seven percent.²³

Despite the newly identified factors, this proposed rule would not change the total amount of assistance available to individuals and households because much of the proposed rule codifies FEMA’s evolving declarations practice since 1999. FEMA does not anticipate the two newly proposed factors would change the total amount of individual assistance as well, which is discussed in the following sections. Benefits of the proposed rule include clarifying FEMA’s existing practices, reducing processing time for requests due to clarifications, and providing States with notice of the new factor information FEMA is proposing to consider as part of the IA declarations process.

A-4 ACCOUNTING TABLE

Category	Estimates			Units			Notes
	Primary estimate	Low estimate	High estimate	Year dollar	Discount rate	Period covered	
Benefits							
Annualized Monetized (\$millions/year)	None	None	None	NA	NA	NA	Not Quantified.
Annualized Quantified	None	None	None	NA	NA	NA	Not Quantified.
Qualitative	The proposed rule more clearly identifies declaration factors FEMA considers in making its recommendation to the President on a major disaster declaration authorizing IA. It codifies many factors FEMA currently considers but are not specifically identified in 44 CFR 206.48(b). The proposed rule may also result in regulatory efficiencies due to reduced process time and effort (back and forth). In addition, the newly identified factors would provide FEMA additional information on a requesting State’s fiscal capacity and resource availability.						
Costs							
Annualized Monetized	\$1,894.0 \$1,853.0	\$0.0 \$0.0	\$0.0 \$0.0	2013 2013	7% 3%	10 Years 10 Years.	None.

²² These can be found on FEMA’s Web site at: <https://www.fema.gov/preliminary-damage-assessment-reports>.

²³ FEMA includes estimates of discounted present value costs and annualized costs according to guidance from OMB Circular A-4. Office of Management and Budget, Published September 17,

2003. Available at: <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf>.

A-4 ACCOUNTING TABLE—Continued

Category	Estimates			Units			Notes
	Primary estimate	Low estimate	High estimate	Year dollar	Discount rate	Period covered	
Annualized Quantified	None	None	None	2013	N/A	10 Years.	
Qualitative	None.						
Transfers							
Federal Annualized Monetized (\$millions/year).	None	None	None	NA	7%	NA	None.
Other Annualized Monetized (\$millions/year).	None	None	None	NA	7%	NA	None.
Effects							
State, Local, and/or Tribal Government.	None	None	None	N/A	NA	NA	None.
Small Business	FEMA certifies under 5 U.S.C. 605(b) that this proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities.						
Wages	None.						
Growth	Not Measured.						

2. Need for Regulatory Action

FEMA is proposing this rule to provide clarity on the IA declaration factors that FEMA currently considers in support of its recommendation to the President on whether a major disaster declaration authorizing IA is warranted. The additional clarity may reduce delays in the declaration process by decreasing back and forth between States and FEMA in the declarations process. FEMA is also proposing two new factors on Fiscal Capacity and Resource Availability to provide additional context on potential disaster situations. The proposed rule would also satisfy the requirements outlined in Section 1109 of SRIA.

3. Affected Population

Requests for a Federal major disaster declaration authorizing IA must come from a State’s Governor. 44 CFR 206.36(a). As such, the proposed rule affects the 56 States that are eligible to request a Presidential major disaster declaration authorizing IA. States are defined in 44 CFR 206.2(a)(22), and include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Although Section 1110 of SRIA amended the Stafford Act to allow Federally recognized Indian Tribal governments to submit requests for emergency or major disaster declarations, SRIA charged FEMA to implement that authority separately by rulemaking. Thus such declarations would be covered by a separate process

and are not included in this proposed rule. Local governments are also not affected by the proposed rule because the disaster related information local governments provide to the State is part of their current disaster response process to provide situational awareness and ascertain need for further assistance.

4. Current Baseline and Changes From Proposed Rule

The proposed rule largely codifies many considerations that FEMA has applied for several years under the “other relevant information” prong of the regulation but were not specifically identified in FEMA regulations. FEMA reviewed State major disaster declaration letters that requested IA for numerous disasters and found that States typically included more information and data than what is specifically identified in the current regulations at 44 CFR 206.48(b).²⁴ As such, costs for States would be minimally impacted by the proposed rule because States currently provide

²⁴ FEMA reviewed a sample of State major disaster declaration request letters and found that each letter was unique and provided many of the data points and information that would be explicitly included under the proposed regulation. The information submitted will vary depending on the disaster, the scope of damages and the need for assistance. FEMA does not require every data point to be submitted to get a declaration. Some requests will have more data or information, while other requests will have less. For instance, in more severe events to less resilient areas, the States did not need to provide a large amount of information to get a declaration, because it was evident to FEMA and the White House that the individual assistance needs were outside the capacity of the requesting State.

FEMA with the proposed information for major disaster declaration requests, as appropriate. A marginal analysis table evaluating each of the considerations is provided later in the preamble and a more detailed table is provided in the rulemaking docket.

In addition, as stated previously, Indian Tribal governments (requesting assistance through the State) and local governments currently provide the proposed factor information for their local area and affected residents to the State in support of a State’s request and its determination on whether a request for a major disaster declaration authorizing IA is warranted. Therefore, FEMA anticipates Indian Tribal governments (requesting assistance through the State) and local governments will not incur additional costs by the proposed regulation.

FEMA is also proposing to include two new factors: Fiscal Capacity and Resource Availability. Both new factors have small burden increases associated with obtaining the additional information. FEMA considers Fiscal Capacity data solely a Federal burden increase since it intends to collect the information. Resource Availability information is considered a State burden increase since States would provide such information. However, FEMA does not anticipate either new factor to impact the number of IA declaration requests received or the amount of IA assistance provided, and therefore no impact to transfer payments.

Fiscal Capacity. FEMA recognizes that each State’s capacity to respond

and recover varies based on the circumstances of the disaster and the State's resources. FEMA intends to include the consideration of fiscal capacity data to better evaluate a State's ability to adequately respond to a disaster with or without supplemental Federal assistance. The GAO has suggested in multiple reports that FEMA should incorporate States' fiscal capacity into its considerations for recommendations on disaster declarations to the President. Though the GAO reports have focused on including fiscal capacity in FEMA's PA declaration factor criteria, FEMA believes that there is a need to assess a State's capacity to respond and recover on its own when determining whether a major disaster declaration that authorizes IA is warranted as well. Furthermore, the GAO supported the use of TTR as a measure of a State's fiscal capacity because it is a comprehensive estimate of the resources that could potentially be subject to State taxation.²⁵ Therefore, FEMA is proposing to include fiscal capacity as an additional factor in its determination.

To ascertain a State's fiscal capacity to respond to a major disaster, FEMA intends to review data on a State's Total Taxable Resources (TTR). The U.S. Department of Treasury calculates the TTR of the State, which is used as a measure of a State's fiscal capacity.²⁶ TTR is based on the GDP per State but makes adjustments for additional, potentially-taxable income flows like capital gains and commuter income. FEMA acknowledges that TTR does not capture a State's actual tax revenue or expenditures and cannot be viewed as a financial accounting of a State's budget. TTR is instead intended to measure all income flows a State can potentially tax.

Resource Availability. Relative to State services and planning after prior disasters, FEMA encourages States to continuously improve their own disaster assistance programs for their citizens. States should identify any new individual assistance programs as well as any improvements to existing individual assistance programs made as

a result of previous disasters. FEMA intends to include this factor to encourage States to continuously evaluate and improve their disaster planning and relief programs based on lessons learned from previous disasters. On the other hand, States that continually fail to address limitations or shortfalls identified after previous events would be a consideration in FEMA's deliberation. Nonetheless, FEMA does not expect that the inclusion of this factor would affect the overall number of major disaster declarations authorizing IA as this factor would be considered with a number of other factors and would not, in isolation, determine whether a declaration is recommended.

5. Impacts to Costs, Benefits, and Transfer Payments

In the following section, FEMA discusses the proposed rule's quantified costs for States and the Federal government, qualitative benefits, and why there are no expected impacts to transfer payments.

a. State Costs

As stated previously, many of the factors listed in the proposed rule have previously been submitted or requested subsequent to a State request and thus are estimated to have no new costs. The two proposed additional factors that have not been typically provided or considered would impose a new cost. FEMA intends to obtain data related to fiscal capacity from publicly accessible databases and Web sites at no cost to States. Providing information on State services and planning after prior disasters would impose a new cost on States. In addition, FEMA assumes the proposed rule may have an initial implementation cost for States to familiarize themselves and understand the new factor data requirements.

If a State is unable to provide information for a particular factor or factors, FEMA would evaluate and provide a recommendation on the State's need for Federal assistance based on the information submitted and data available from other sources, as appropriate. The only required elements of a State's major disaster declaration request appear at 44 CFR 206.36. FEMA's intent, through this proposed rule, is to clearly identify the considered data points that are previously captured under the "other relevant information" prong of the regulation to inform the States' formulation of their request. In some scenarios, certain pieces of information identified in the proposed rule may be inapplicable or unavailable. In addition, FEMA recognizes that the

circumstances of a disaster may not allow a State to collect all of the information identified within the proposed rule. States would need to provide information that supports their request for a major disaster declaration authorizing IA, but would not have to address every data point in the proposed rule to be granted the request. For example, for a catastrophe of unusual severity and magnitude such that preliminary damage assessments are not necessary to determine the requirement for Federal assistance, States may submit an abbreviated request pursuant to 44 CFR 206.36(d), which need only contain limited information required by that provision. The proposed rule is identifying factors, which FEMA would consider in its review of a major disaster declaration request that includes IA when making recommendations to the President, but ultimately the amount of data provided by the State is voluntary.

FEMA anticipates information on State services and planning after prior disasters would be addressed in a short summary in the Governor's request. FEMA program employees who work with declarations estimate that a State would spend an additional 30 minutes collecting and incorporating information on State services and planning after prior disasters into the State's declaration request. FEMA assumes this time would be used to write a paragraph or two on why the State lacks the resources to provide sufficient services to its citizens and any new or existing State individual assistance programs or improvements made to State individual assistance programs as a result of previous disasters. FEMA assumes that a State would be aware of their own service and program capabilities prior to considering whether a request for a major disaster declaration that authorizes IA is warranted. In addition, a State may build upon past requests in subsequent requests depending on whether their program efforts have been ongoing or have changed.²⁷ FEMA previously estimated that States spend 33 hours on average to compile, write, and submit a request for a declaration.²⁸ FEMA assumed the equivalent of a State Government Chief Executive, a senior

²⁵ United States Government Accountability Office, FEDERAL DISASTER ASSISTANCE: Improved Criteria Needed to Assess a Jurisdiction's Capacity to Respond and Recover on Its Own, GAO-12-838, September 2012, Page 31. Available at: <http://www.gao.gov/assets/650/648162.pdf>.

²⁶ A 2012 GAO report stated that other Federal departments and agencies have used TTR data to determine a jurisdiction's fiscal capacity and the extent to which a jurisdiction should be eligible for Federal assistance; specifically the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration's block grant program and Community Mental Health Service.

²⁷ FEMA recognizes there may be a level of repetition in a State's request, but FEMA would prefer to ensure it has up to date information, including recent efforts from previous disasters, for the White House and FEMA to consider.

²⁸ FEMA has provided the supporting statement document for the information collection, OMB Control Number 1660-0009, in the public rulemaking docket. The supporting statement dated February 25, 2013 was the latest supporting statement prior to this proposed regulation.

level government official familiar with State emergency assistance programs, would prepare the Request for Presidential Disaster Declaration Major Disaster or Emergency, FEMA Form 010-0-13. Per the U.S. Department of Labor Bureau of Labor Statistics, the average hourly wage rate for a State Government Chief Executive is \$54.66 which FEMA multiplied by 1.4 to account for benefits.²⁹ This results in a fully loaded State Government Chief Executive hourly wage rate of \$76.52. Between January 2004 and December 2013, FEMA received 413 requests for a major disaster declaration that authorized IA. FEMA divided 413 by ten years to estimate that States would submit an average of 41 requests for major disaster declarations authorizing IA per year. FEMA multiplied 30 minutes (0.5 hours) by the fully loaded hourly wage rate of \$76.52 and 41 submissions to get an annual cost of \$1,569 ($0.5 \times \$76.52 \times 41 = \$1,568.66$).

As noted above, most of the information included in the proposed factors is information that was previously captured under the “other relevant information” prong of the regulation and has been considered, as appropriate, when evaluating requests for a major disaster declaration that authorized IA. However, FEMA at times has had to reach back to the State for additional information.³⁰ By clearly identifying information considered in the proposed rule, FEMA anticipates that such delays in the declaration process would be diminished. With the changes in the proposed rule, the regulations would improve clarity regarding potentially relevant information. States would be encouraged to include the fulsome information in the original request, which could potentially eliminate follow-up correspondence and speed up the determination of a major disaster declaration request. Although FEMA recognizes that large scale disasters may not need as much detail or data to support a major disaster declaration request due to the extent of IA damage costs; other disasters may be more difficult to determine if a need for

Federal disaster assistance exists without the State providing additional information identified in the proposed rule. Thus the proposed rule provides the State with the types of requested data that informs FEMA’s recommendation and ultimately, the President’s determination of a State’s need for a major disaster declaration that authorizes IA.

To estimate the time for States to understand changes made to the regulations, State governments would spend time reading the proposed and existing regulations. Based on a sample of FEMA employees who formerly worked for State governments, FEMA estimates States would spend 30 minutes (0.5 hours) to familiarize themselves and understand the new factor data requirements.³¹ FEMA assumes the equivalent of a State Government Chief Executive, a senior level government official familiar with State emergency assistance programs, would read the existing and new regulations to understand the changes. FEMA multiplies the fully loaded hourly wage rate of a State Government Chief Executive, calculated above as \$76.52, by 0.5 hours and 56 States, to calculate an increased State cost of \$2,143 ($\$76.52 \times 0.5 \times 56 = \$2,142.56$). FEMA assumes State governments would read the regulation once in the first year it goes into effect and would subsequently refer to supplemental guidance materials, such as the Governor’s request template, to complete requests.

FEMA estimates total State costs in the first year to be \$3,712. FEMA estimates State costs in subsequent years to be \$1,569.

b. Federal Costs

FEMA anticipates the Federal government would incur minor additional costs by the rule because, as noted above, FEMA already considers most of these factors under the “other relevant information” prong of the

regulation when reviewing major disaster declaration requests. In addition, FEMA has already begun to change the way it collects information for major disaster declaration recommendations that did not require regulatory action.

In the past, FEMA would review pre-disaster data about a disaster location. This pre-disaster data provided FEMA information about the disaster location that helped to illustrate the population and area that was impacted by a disaster. The pre-disaster data came from Federal sources, such as the United States Census Bureau and the Bureau of Labor Statistics. Independent of the regulation, FEMA had begun a process to streamline how pre-disaster data is collected and disseminated as well as improving the efficiency and speed of the PDA process by using new technologies and processes to collect and transmit information faster.

One of the areas where FEMA would incur costs is for the retrieval of fiscal capacity data from Treasury and BEA. To estimate the additional activity time, FEMA performed a dry run retrieval and storage of the relative fiscal capacity data. To retrieve, store, and update Treasury’s TTR data (including all State data in a single retrieval), FEMA estimates it would take 10 to 15 minutes, and uses the average of this range, 12.5 minutes, for the purposes of this analysis. FEMA estimates it would take the equivalent amount of time for the BEA’s GDP per State data, and uses 12.5 minutes as well. FEMA estimates it would take 15 to 30 minutes to retrieve BEA per capita personal income data and uses the average of 22.5 minutes. FEMA sums these three time burdens to calculate a total burden of 47.5 minutes and divides by 60 minutes, for an estimated increase burden of 0.79 hours ($\times ((12.5+12.5+22.5)/60=0.7917)$).

FEMA anticipates this data retrieval to take place once annually, and to be completed by a Federal employee in the DC area at the General Schedule 12, Step 1 level, at an hourly wage rate of \$36.23.³² FEMA multiplies this wage rate by 1.4 to account for benefits, resulting in a fully loaded wage rate of \$50.72. FEMA multiplies the time per year, 0.79 hours by the fully loaded wage rate of \$50.72, to get an annual Federal cost increase of \$40 (0.79 x

²⁹ U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, May 2013 National Industry-Specific Occupational Employment and Wage Estimates, NAICS code 999200, State Government excluding schools and hospitals, and Standard Occupational Classification (SOC) code 11-1011 for Chief Executive. http://www.bls.gov/oes/2013/may/naics4_999200.htm.

³⁰ Historically, FEMA has attempted to cure some of the lack of clarity by providing States with major disaster declaration request template letters, which provided a suggested organizational structure for States to follow when making their request for a major disaster declaration.

³¹ To estimate the time for States to familiarize themselves and understand the new factor data requirements, FEMA surveyed its own employees who formerly worked for State governments. Thirteen employees were identified who worked for various States, representing multiple regions, State sizes, and a range in years of service in State government and FEMA. These employees were asked to read the proposed and existing regulations and answer questions to test their understanding of the changes. The employees were also provided a copy of excerpts of this regulatory preamble if they needed further information to answer the test. About 40 percent of the employees referred back to the preamble to answer the questions. It took an average of 17 minutes to read the existing and proposed regulatory text and 11 minutes to answer the questions, including referring back to the preamble. FEMA rounded 28 minutes (11 minutes + 17 minutes) to 30 minutes and uses 0.5 hours to calculate the costs.

³² The General Schedule (GS) 12 (Step 1) hourly wage of \$36.23 is taken from the Office of Personnel Management; 2014 General Schedule (GS) salaries & wages tables; locality pay tables (Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA). Retrieved 7/30/14 from <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2014/general-schedule/>.

\$50.72 = \$40.07), and ten-year total Federal increase of \$400.

The following table displays the ten year total costs (undiscounted, discounted at three percent, and

discounted at seven percent) for the proposed rule.

TABLE 2—TOTAL COSTS OF THE PROPOSED RULE

Year	State initial review cost	State costs (providing information)	FEMA costs (retrieving data)	Undiscounted annual costs	Annual costs discounted at 3%	Annual costs discounted at 7%
1	\$2,143	\$1,569	\$40	\$3,752	\$3,643	\$3,507
2		1,569	40	1,609	1,517	1,405
3		1,569	40	1,609	1,472	1,313
4		1,569	40	1,609	1,430	1,227
5		1,569	40	1,609	1,388	1,147
6		1,569	40	1,609	1,348	1,072
7		1,569	40	1,609	1,308	1,002
8		1,569	40	1,609	1,270	936
9		1,569	40	1,609	1,233	875
10		1,569	40	1,609	1,197	818
Total	2,143	15,690	400	18,233	15,806	13,302

c. Benefits

Benefits of the proposed rule include clarifying FEMA's existing practices, reducing processing time for requests, and providing States with notice of the new factor information FEMA is proposing to consider as part of the IA declarations process. States have the ability to assess and determine what information supports a major declaration request. The proposed rule would identify factors considered in the IA declarations process, including many factors that FEMA previously considered under the "other relevant information" prong of the regulation, but are not currently specified in 44 CFR 206.48(b).

In the past, FEMA may have at times had to follow up for additional information on major disaster declaration requests to better support FEMA's recommendation on a major disaster declaration authorizing IA. This regulation would improve clarity on the factors that FEMA considers when evaluating the need for a major disaster declaration authorizing IA. FEMA expects this to lessen or possibly eliminate the need to go back to the States for additional information.³³

The two newly identified factors would also provide additional context to a State's circumstances to help inform FEMA's recommendation. FEMA believes the inclusion of fiscal capacity would further inform and strengthen FEMA's recommendations to the President with regard to major disaster declarations that authorize IA. In

addition, information considered may be available more quickly and provide a fuller context. Such measures may also be more objective compared to other perceptions of a State's capacity to respond. This would also provide notice to States of the new factor information FEMA would consider.

d. Transfer Payments

First, it is important to note that the ultimate determination regarding whether or not to grant a State's request for a major disaster declaration resides with the President. FEMA does not anticipate or intend for this proposed rule to affect the number of major disaster declarations authorizing IA granted each year. As FEMA has previously considered the majority of the proposed factors in past declaration requests for individual assistance and data used in the proposed new factors are correlated to past declaration recommendations, FEMA anticipates this proposed rule would not have an impact on transfer payments, which are payments from the Federal government to States and individuals.

FEMA intends the proposed rule to identify factors that it would use when making recommendations to the President. FEMA already considers the majority of factors described in the proposed rule during previous deliberations on whether to recommend a major disaster declaration authorizing IA to the President. The only data items that FEMA has not considered in the past are the data on (1) State services and planning after prior disasters and (2) the fiscal capacity factor.

State Services and Planning after Prior Disasters. As stated previously, FEMA does not expect that the inclusion of these data items would

affect the overall number of major disaster declarations authorizing IA as this factor would be considered with a number of other factors and would not, in isolation, determine whether a declaration is recommended.

Fiscal Capacity. Although FEMA is introducing a factor for fiscal capacity, analysis conducted in preparation of this proposed rule reveals that FEMA's recommendations and major disaster declarations by the President in the past have a correlation to the fiscal capacity of the requesting State. Historically, FEMA captured an aspect of fiscal capacity when evaluating the damage caused by each disaster in relation to the population of the affected State. States with the highest TTR also tend to have the highest population. As such, major disaster declarations authorizing IA have had a correlation to the fiscal capacity of the requesting State.

FEMA conducted a review of 153³⁴ major disaster declaration requests that included IA that were submitted between January 2008 to July 2013 to determine if there would be any impact from using TTR in assessing a State's need for a major disaster declaration authorizing IA. Each State request included an estimate of the costs from the damages attributed to the disaster event. FEMA retrieved the TTR per State at the time of each request. For each request, FEMA divided the estimated cost of IA by the State TTR in millions. For example, if a State estimated \$2,000,000 in IA costs and the State's TTR was \$30,000,000,000, FEMA

³³ In making past determinations, FEMA has not tracked the length of time or the number of written or oral correspondence with the State to retrieve additional data. Therefore FEMA cannot quantify the potential savings from the clarifications provided in the proposed regulation.

³⁴ For the analysis on TTR, FEMA excluded disaster declaration requests that did not include a request for IA. FEMA also excluded duplicate requests, U.S. territories' requests (because there is no TTR data available), requests without summaries of the PDA data or with insufficient data, and requests that involved an expedited decision.

divided \$30,000,000,000 by \$1,000,000 to get the State's TTR in millions which is \$30,000. FEMA then divided \$2,000,000 by \$30,000 to get the ratio of ICC (IA Cost to Capacity) of 66.7.

Based on the ICC calculation for all 153 State requests, there is a general trend that shows the greater the ICC

ratio for a major disaster declaration request that included IA, especially above 25, the more likely the request would be granted. Additionally, the lower the ICC ratio for a major disaster declaration request that included IA, especially below 10, the more likely the

request was denied. The following table displays the total number of requests and the total granted major disaster declarations based on ICC ratio size as well as the percentage of granted major disaster declaration requests within the respective ICC group.

TABLE 3—NUMBER OF IA REQUESTS AND GRANTED IA REQUESTS BY ICC RATIO

ICC Ratio	Number of requests (2008–2013)	Number of approved requests (2008–2013)	Percentage of approved requests (2008–2013)	Percentage of approved requests in range (2008–2013)
>25	43	41	57.7%	95%
10–25	53	26	36.6%	49%
<10	57	4	5.6%	7%
Total	153	71	100%	

Based on the above data, there were 53 major disaster declaration requests that included IA with ICC ratios between 10 and 25; and 26 of these requests were declared major disasters that included IA. Hence, approximately half (26/53 = 49 percent) of major disaster declaration requests with ICC ratios between 10 and 25 that included IA were granted. FEMA believes this approval rate helps illustrate that other factors are taken into consideration when determining FEMA's recommendation especially in borderline events.

In addition, based on the above data, the higher the estimated cost of IA damages and the lower the State TTR, the more likely a major disaster declaration request authorizing IA was granted in the past. FEMA did not review TTR data when making these previous decisions; however there appears to be a past trend that decisions had an inverse correlation between estimated IA costs and State TTR. This is likely because past declaration criteria, such as State population, are highly correlated with State TTR. Furthermore, depictions of States' economic health, similar to TTR, were already captured in data from State major disaster declaration requests in the past. For example, the State median household income and the State TTR per capita are highly correlated because States that have a higher median household income also tend to have a higher TTR per capita. Thus, FEMA assumes that the impact of considering TTR in future major disaster declaration recommendations would be minimal because FEMA previously considered data that follows the same trend as TTR.

Furthermore, there were major disaster declaration requests that had

high IA cost estimates, and though the State had a higher than average TTR, the major disaster declaration authorizing IA was still granted. FEMA recognizes that some disasters cause enough damage to overwhelm even the most prepared and fiscally capable States and local governments and that disasters may have special circumstances warranting assistance.

FEMA's intent in this proposed rule is to continue to take multiple factors into consideration in addition to TTR. Therefore, fiscal capacity would be more relevant following events where it is not clear whether or not the State and affected local governments are, in fact, overwhelmed.

Based on the above analysis, FEMA concluded that even though fiscal capacity is a new factor, it would not have an impact on the overall number of major disaster declarations granted each year that authorize IA because FEMA previously followed a trend that utilized similar economic data and takes various factors into account. Even though FEMA did not collect or factor the TTR per State in previous major disaster declaration recommendations that included IA to the President there was a correlation; and FEMA assumes that IA declarations will follow a similar trend in the future.

FEMA also intends to review data on per capita personal income by local area to ascertain a local government's fiscal capacity. FEMA previously evaluated data on median household income per county and foresees minimal impact from also reviewing per capita personal income by local area because both data points are indicators of the economic circumstances of local areas.

Again, FEMA proposes the use of the fiscal capacity factor in future

recommendations regarding major disaster declarations that include IA and acknowledges that the new data points would be utilized in conjunction with several other data points. FEMA would continue to use a myriad of factors and data to formulate its recommendations to the President on major disaster declarations that authorize IA. No single data point or factor would singularly affect FEMA's recommendation nor would each individually affect the President's ultimate determination of whether a major disaster declaration authorizing IA is warranted.

9. Cumulative Impact of the Proposed Rule

FEMA has reviewed the proposed rule's impact on States that request a Presidential major disaster declaration that authorizes IA. FEMA estimates the cumulative impact of all the factors together will result in a minor burden increase for States to provide more information in their requests and for FEMA to retrieve data for its consideration on requests. The net quantified impact is a ten-year total cost of \$18,233. This cost may be offset by cost savings from efficiencies attributed to the information FEMA currently iteratively requests from States but are not captured in the current regulations. FEMA anticipates no cumulative impact to average annual transfer payments based on the inclusion of all the proposed factors. Based on the above analysis, FEMA estimates that this proposed rule is not an economically significant rulemaking because the proposed rule would impose an

additional average annual burden of less than \$2,000³⁵ on the public and FEMA.

10. Marginal Analysis of the Proposed Factors

The following table provides a breakdown of each IA declaration factor

included in the proposed rule. It also identifies which factors are new or previously considered. Activity costs per year and associated benefits are also included. The proposed rule would not change the total amount of Federal

assistance available to individuals and households. A more detailed table providing additional information is also included in the rulemaking docket on www.regulations.gov.

TABLE 4—IA DECLARATIONS FACTOR MARGINAL ANALYSIS

Factor	Status	Activity cost per year	Benefits
Fiscal Capacity: Total Taxable Resources (TTR) of the State 44 CFR § 206.48(b)(1)(i)(A)	New	\$11—FEMA will spend 10–15 minutes a year retrieving and storing Treasury data (including all State data in one retrieval).	Informs States that FEMA may assess State’s taxable resources based on TTR and may use TTR to depict State economic growth or decline and relative fiscal capacity with comparably-sized States or the Nation.
Fiscal Capacity: Gross Domestic Product (GDP) by State 44 CFR § 206.48(b)(1)(i)(B)	New	\$11—FEMA will spend 10–15 minutes a year for retrieving and storing BEA GDP data (including all State & Territory data in one retrieval).	Informs States that FEMA may assess State fiscal capacity with this data point when TTR data is not available or if the TTR data is inaccurate due to the 2 year lag in the data update.
Fiscal Capacity: Per Capita Personal Income by Local Area 44 CFR § 206.48(b)(1)(i)(C)	New	\$19—FEMA will spend 15–30 minutes a year for retrieving and storing BEA Per Capita Personal Income data annually (including data on all local areas in one retrieval).	Provides FEMA the flexibility to use information on the local fiscal capacity characteristics to judge IA needs in disaster affected areas.
Fiscal Capacity: Other Factors 44 CFR § 206.48(b)(1)(i)(D)	New	\$0—State time will vary and data will be used on a case-by-case basis as needed.	Provides FEMA the flexibility to use any other data or information on a State or local area’s fiscal capacity to judge disaster needs in affected areas.
Resource Availability: State Tribal and Local Government Non-Governmental Organizations (NGO) and Private Sector Activity 44 CFR § 206.48(b)(1)(ii)(A)	Previously Considered.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Resource Availability: Cumulative Effect of Recent Disasters 44 CFR § 206.48(b)(1)(ii)(B)	Previously Considered.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Resource Availability: State Services 44 CFR § 206.48(b)(1)(ii)(C)	New	\$784.5—15 minutes for States to discuss why the State does not have sufficient funding to provide adequate State services to its own citizens after a major disaster.	Provides FEMA more information to evaluate the resources States have used. States consider their resources in their request.
Resource Availability: Planning After Prior Disasters 44 CFR § 206.48(b)(1)(ii)(D)	New	\$784.5—15 minutes for States to discuss improvements to their State IA programs and any disaster planning that occurred after prior major disasters.	Provides FEMA more information to evaluate the State’s resource planning. State’s demonstrate they have planned after recent disasters.
Uninsured Home and Personal Property Losses: The cause of damage 44 CFR § 206.48(b)(2)(i)	Previously Considered.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Uninsured Home and Personal Property Losses: The jurisdictions impacted and concentration of damage 44 CFR § 206.48(b)(2)(ii)	Previously Considered.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Uninsured Home and Personal Property Losses: The number of homes impacted and degree of damage 44 CFR § 206.48(b)(2)(iii)	Previously Considered.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Uninsured Home and Personal Property Losses: The estimated cost of assistance 44 CFR § 206.48(b)(2)(iv)	Previously Considered.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Uninsured Home and Personal Property Losses: The homeownership rate of impacted homes 44 CFR § 206.48(b)(2)(v)	Previously Considered.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Uninsured Home and Personal Property Losses: The percentage of affected households with insurance coverage appropriate to the peril 44 CFR § 206.48(b)(2)(vi)	Previously Considered.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Uninsured Home and Personal Property Losses: Other relevant preliminary damage assessment data 44 CFR § 206.48(b)(2)(vii)	Previously Considered.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.

³⁵ FEMA estimated the first year implementation cost of approximately \$3,700 and \$1,600 annually

for subsequent years in previous section of this regulatory analysis.

TABLE 4—IA DECLARATIONS FACTOR MARGINAL ANALYSIS—Continued

Factor	Status	Activity cost per year	Benefits
Disaster Impacted Population Profile: The percentage of the population for whom poverty status is determined 44 CFR § 206.48(b)(3)(i)	Previously Considered.	\$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
Disaster Impacted Population Profile: The percentage of the population already receiving government assistance such as Supplemental Security Income and Supplemental Nutrition Assistance Program benefits 44 C.F.R § 206.48(b)(3)(ii)	Previously Considered.	\$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
Disaster Impacted Population Profile: The pre-disaster unemployment rate 44 CFR § 206.48(b)(3)(iii)	Previously Considered.	\$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
Disaster Impacted Population Profile: The percentage of the population that is 65 years old and older 44 CFR § 206.48(b)(3)(iv)	Previously Considered.	\$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
Disaster Impacted Population Profile: The percentage of the population 18 years old and younger 44 CFR § 206.48(b)(3)(v)	Previously Considered.	\$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
Disaster Impacted Population Profile: The percentage of the population with a disability 44 CFR § 206.48(b)(3)(vi)	Previously Considered.	\$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
Disaster Impacted Population Profile: The percentage of the population who speak a language other than English and speak English less than “very well” 44 CFR § 206.48(b)(3)(vii)	Previously Considered.	\$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
Disaster Impacted Population Profile: Any unique considerations regarding American Indian and Alaskan Native Tribal populations that may not be reflected in the U.S. Census Bureau data 44 CFR § 206.48(b)(3)(viii)	Previously Considered.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Impact to Community Infrastructure: Life Saving and Life Sustaining Services 44 CFR § 206.48(b)(4)(i)	Previously Considered.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Impact to Community Infrastructure: Essential Community Services 44 CFR § 206.48(b)(4)(ii)	Previously Considered.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Impact to Community Infrastructure: Transportation Infrastructure and Utilities. 44 CFR § 206.48(b)(4)(iii)	Previously Considered.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Casualties: The number of missing, injured, or deceased individuals 44 CFR § 206.48(b)(5)	Previously Considered.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Disaster Related Unemployment: The number of disaster survivors who lost work or became unemployed due to a disaster and who do not qualify for standard unemployment insurance 44 CFR § 206.48(b)(6)	Previously Considered.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
All Factors : All Data Points § 206.48(b)	6 New & 22 Previously Considered.	\$3752 in the first year and \$1609 in the subsequent annual reoccurring costs—Increase time burden due to new factors and time for the State to read and understand the new regulations.	Informs States with the information that FEMA considers when deciding whether to recommend an IA declaration to the President’s Office.

11. Regulatory Alternatives

FEMA includes the regulatory alternatives to the proposed rule and the reasons for choosing not to use each alternative in the following discussion. The decision on each alternative was based on qualitative factors and not on a quantitative analysis of these alternatives. When possible, FEMA acknowledges if the respective

alternative could have an impact on economic transfer payments or costs.

a. Voluntary, Faith and Community Based Organizations Resources

FEMA considered removing the information on resources available from voluntary, faith, and community based organizations during disasters from its list of determining factors. Stakeholders suggested removing these organizations

because their availability may be limited by their financial circumstances, their donors’ economic situations, and the circumstances of their volunteers. FEMA recognizes this concern but believes that information on the activities of these organizations is valuable because it can enhance the picture of disaster needs at a local level and may offset or reveal a need for supplemental Federal assistance. FEMA

also recognizes that these organizations have limited resources, and considers this point when determining the need for an IA declaration. FEMA anticipates there could be impacts on transfer payments due to changes in the number of disaster declarations if resources available from voluntary, faith, and community based organizations were no longer considered. If FEMA was to remove this factor from consideration in major disaster declaration request for IA, it could potentially move transfer payments in either direction, depending on the situation. For example, if a State no longer describes how their voluntary agencies are overwhelmed, then FEMA may not be inclined to recommend a major disaster declaration that authorizes IA and would decrease transfer payments. On the other hand, FEMA could potentially be more inclined to recommend a major disaster declaration that authorizes IA without information on the voluntary agencies' resources, which could increase transfer payments.

b. Maintain the 44 CFR 206.48(b)(6) Table

FEMA evaluated the utility of the current 44 CFR 206.48(b)(6) table listing the average amount of IA based on State size, and determined it causes confusion with stakeholders. This table of averages does not set a threshold for recommending Individual Assistance, but was intended as guidance to States and voluntary agencies as they develop plans and programs to meet the needs of disaster survivors. FEMA determined that the table should be removed because it causes confusion among States, and may be used incorrectly as a threshold for whether a State should request Individual Assistance. Furthermore, the table has been interpreted by States to suggest that State population is the main factor or the only factor in determining State capability or fiscal capacity. In the proposed rule, FEMA would continue to consider various factors when making its recommendation. FEMA did not quantify the impacts of this alternative but assumed there would not be economic impacts from maintaining the table because other factors are already considered. FEMA has chosen to remove the table for clarification purposes.

c. Automatically Trigger Contiguous Counties and States

Based on stakeholder recommendations, FEMA considered whether to include a provision that would allow contiguous affected counties and States to be automatically

declared as a major disaster after an event that crosses the borders of a declared State or county. FEMA recognizes that State or county lines do not bind disaster events geographically, but in considering whether to declare a particular area, FEMA must consider the damages in the area as well as the capabilities of the jurisdictional governments. The Stafford Act requires that a Governor's request for a major disaster declaration be based on a finding that the disaster is of such severity and magnitude to be beyond the capabilities of the State and affected local governments to effectively respond. 42 U.S.C. 5170(a). Thus, FEMA is proposing to maintain the requirement that each county and State must request a major disaster declaration after determining that the disaster damages and impacts are beyond the capabilities of the affected area's State or local government. FEMA cannot automatically grant a major disaster declaration based on proximity to other declared areas without evidence that the disaster damage and impacts are beyond the affected area's capabilities.

FEMA did not quantify the impacts of this alternative but does acknowledge there could be an increase in transfer payments if FEMA automatically declared affected counties and States contiguous to a declared State or county. FEMA assumed this alternative would result in transfer payment increases because specifics about damage information and resource capabilities of nearby counties would not be considered and less impacted counties would likely be provided assistance based on geographic location rather than need.

d. Considering Negative Impact on Businesses

FEMA considered including the impact of an incident on businesses in affected areas, including business losses based on stakeholder recommendations. FEMA is proposing a revised factor that considers the impact to businesses because the negative impacts to employers and employees may affect a community's ability to recover. Business losses alone, however, will not result in a Presidential major disaster declaration that authorizes IA because the IA grant programs do not provide assistance to businesses. Instead, FEMA considers the effect that business disruptions have on disaster survivors. For example, if disaster survivors lose work or become unemployed due to business impacts from a disaster, this information may highlight an increased need for DUA. In addition, the Small Business Administration (SBA) has separate

statutory authority and programs, which may be available to assist businesses absent a Presidential major disaster declaration. FEMA did not quantify the impacts of the alternative considering business losses separately from business impacts to disaster survivors.

e. Linking Individual Assistance Cost Factor With Public Assistance Cost Factor

FEMA considered aligning the financial indicators for IA and PA major disaster declarations based on stakeholder recommendations. Currently, FEMA evaluates the need for a Public Assistance major disaster declaration by reviewing the estimated cost of Federal and non-federal public assistance against the statewide population to give a measure of the per capita impact within the State. 44 CFR 206.48(a)(1). That factor also establishes a \$1 million threshold, based on the proposition that even the smallest population States have the capability to cover that level of public assistance infrastructure damage. Under FEMA's current regulations, there is no corresponding IA single indicator designed to evaluate the total cost of the disaster against the capability of a requesting State.

FEMA chose not to use the Public Assistance per capita indicator measure and instead choose to utilize the fiscal capacity factor as indicators of a State's fiscal capacity to meet the needs of individuals after an event. FEMA considers multiple factors and does not believe a set limit, even based on estimated damages and population, is an appropriate indicator due to the varying needs and circumstances of disaster survivors. FEMA did not quantify the impact of this alternative but does assume that it could have an impact on transfer payments due to changes to the number of major disaster declarations that authorize IA.

f. Use of Factor Thresholds

Some stakeholders indicated that they would prefer specific "hard" thresholds that indicate whether a State would be eligible to receive a major disaster declaration authorizing IA. The stakeholders felt that established thresholds would give States a clear idea of what level of damage and need the State must have before requesting assistance. The stakeholders believed that this would prevent States from spending the time compiling the data and requesting a declaration when they have not sustained enough damage to qualify for a major disaster declaration that authorizes IA. FEMA rejected a threshold indicator because it would be

inconsistent with the principles of Section 320. FEMA also decided to not pursue using thresholds because they would be too restrictive, and would not be appropriately flexible to assess the various scenarios that demonstrate the State's need for a declaration authorizing IA. FEMA assumes this alternative could have an impact on transfer payments due to changes in the number of declarations and could reduce State costs if they chose not to pursue a declaration request for IA.

g. Homes in Foreclosure

Some stakeholders stated that if an area with a high foreclosure rate is affected by a disaster, then these homes without an owner would be a greater burden to the State during the recovery process. FEMA's IA programs do not provide any form of assistance for foreclosed homes, and repair assistance is available only for owner-occupied primary residences. FEMA recognizes that high levels of foreclosure may be associated with economic difficulties in the affected area which could negatively impact a community's ability to recover. If a State believes that homes in foreclosure will impact their capability to respond to the disaster, then the State may articulate this concern in the narrative portion of their declaration request. FEMA considers all relevant information provided in a State's request. See 44 CFR 206.48. However, FEMA believes other factors including poverty level, pre-disaster unemployment, and per capita personal income will be adequate indicators of economic health, and has chosen to not include home foreclosure rates in the proposed evaluation factors.

h. Do Not Include Fiscal Capacity Indicators

FEMA considered the alternative of not including fiscal capacity indicators. This option would leave discretion on how to assess State capabilities up to FEMA and the White House without identifying quantified data utilized or encouraging States to provide more information on their fiscal capacity. FEMA chose to include the fiscal capacity indicators because they provide objective quantified data for FEMA and the White House to assess the capabilities of a State. The factor also provides notice to the State on what will be used to evaluate it and that the State can provide additional information describing their fiscal capabilities. In this alternative, the Federal cost of the proposed rule would decrease by a small amount, approximately \$40 a year, based on FEMA no longer having to retrieve BEA

and Treasury data. Considering the low cost and potentially useful information this factor could provide, FEMA chose to maintain fiscal capacity information in the proposed rule.

i. Do Not Include State Resources Indicators

FEMA considered the alternative of not including State resource indicators. If this factor was not included, FEMA and the White House's ability to assess if States have programs suitable to respond to and recover from the disaster and if the States have prepared or improved their programs after recent disasters would not be improved. The State cost of the proposed rule would decrease, approximately \$1,570 annually for all State's major disaster declaration requests that include IA. Considering the low cost, approximately \$38 per request, and the potentially useful information this factor information could provide, FEMA chose not to use this alternative.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121, 110 Stat. 857), FEMA must consider the impact of this proposed regulation on small entities. 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. When the Administrative Procedure Act requires an agency to publish a notice of proposed rulemaking under 5 U.S.C. 553, the RFA requires a regulatory flexibility analysis for both the proposed rule and the final rule if the rulemaking could "have a significant economic impact on a substantial number of small entities." The RFA also provides that if a regulatory flexibility analysis is not required for this reason, the agency must certify in the rulemaking document that the rulemaking will not "have a significant economic impact on a substantial number of small entities" and must include a statement providing the factual basis for such certification.

This proposed rule provides States with factors FEMA would consider when making a recommendation on a major disaster declaration that authorizes IA and codifies many factors that are currently considered but are not adequately captured in 44 CFR 206.48(b). This rule will not directly impact small businesses, small not-for-profit organizations, and small governmental jurisdictions. States are

not considered small entities under the RFA since they have populations of more than 50,000.³⁶ Hence, FEMA certifies under 5 U.S.C. 605(b) that this proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501-1504, 1531-1536, 1571, pertains to any notice of proposed rulemaking which implements any rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation) or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. FEMA has determined that this proposed rule can be excluded from this assessment as the proposed rule meets the criteria set forth in 2 U.S.C. 1503(4), which states, "This chapter shall not apply to . . . any provision in a proposed or final Federal regulation that—. . . (4) provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government." Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. National Environmental Policy Act

Under the National Environmental Policy Act of 1969 (NEPA), *as amended*, 42 U.S.C. 4321 *et seq.*, an agency must prepare an environmental assessment or environmental impact statement for any rulemaking that significantly affects the quality of the human environment. As explained below, FEMA has determined that this rulemaking does not significantly affect the quality of the human environment and consequently has not prepared an environmental assessment or environmental impact statement.

NEPA implementing regulations governing FEMA activities at 44 CFR 10.8(d)(2)(ii) categorically exclude the preparation, revision, and adoption of regulations from the preparation of an EA or EIS, where the rule relates to actions that qualify for categorical

³⁶ The District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, which are considered States under 44 CFR 206.2(a)(22), all have populations greater than 50,000.

exclusions. Most activities under Section 408 and prior Section 411 of the Stafford Act pertaining to temporary housing and financial assistance are categorically excluded from NEPA review under 44 CFR 10.8(d)(2)(xix)(D) and (F). Before undertaking other activities that are not categorically excluded (e.g., placement of manufactured temporary housing units on FEMA-constructed group sites; permanent or semi-permanent housing construction), FEMA follows the procedures set forth in 44 CFR part 10 to assure NEPA compliance.

In addition, this proposed rule revises the criteria that FEMA considers when recommending an area eligible for IA under a major disaster declaration. A major disaster declaration recommendation to the President is falls into information and data gathering and reporting efforts in support of emergency and disaster response and recovery and hazard mitigation. Therefore, the activity this rule applies to meets FEMA’s Categorical Exclusion in 44 CFR 10.8(d)(2)(xviii)(E). Because no other extraordinary circumstances have been identified, this rule does not require the preparation of either an EA or an EIS as defined by NEPA.

E. Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163, (May 22, 1995) (44 U.S.C. 3501 *et seq.*), 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 control number.

In this proposed rule, FEMA is seeking a revision to the already existing collection of information, OMB Control Number 1660–0009, because FEMA has refined our estimates related to 1660–0009. This proposed rule serves as the 60-day comment period for this proposed change pursuant to 5 CFR 1320.12. FEMA invites the general public to comment on the proposed collection of information.

Collection of Information

Title: The Declaration Process: Requests for Preliminary Damage Assessment (PDA), Requests for Supplemental Federal Disaster Assistance, Appeals, and Requests for Cost Share Adjustments.

Type of information collection: Revision of a currently approved collection.

OMB Number: 1660–0009.

Form Titles and Numbers: FEMA Form 010–0–13, Request for Presidential Disaster Declaration Major Disaster or Emergency.

Abstract: When a disaster occurs in a State, the Governor of the State or the Acting Governor in his/her absence, may request a major disaster declaration or an emergency declaration. The Governor should submit the request to the President through the appropriate Regional Administrator to ensure prompt acknowledgement and processing. The information obtained by joint Federal, State, and local preliminary damage assessments will be analyzed by FEMA regional senior level staff. The regional summary and the

regional analysis and recommendation will include a discussion of State and local resources and capabilities, and other assistance available to meet the disaster related needs. The Administrator of FEMA provides a recommendation to the President and also provides a copy of the Governor’s request. In the event the information required by law is not contained in the request, the Governor’s request cannot be processed and forwarded to the White House. In the event the Governor’s request for a major disaster declaration or an emergency declaration is not granted, the Governor may appeal the decision.

Affected Public: State, local, or Tribal Government.

Estimated Number of Respondents: 622.

Estimated Number of Responses: 355.
Estimated Total Annual Burden Hours: 11,737.

The previously approved Total Annual Burden Hours was 11,715 hours. Based on the proposed rule’s minor increase in burden, the new estimated Total Annual Burden Hours is 11,737 hours. This increase of 22 hours is attributed to the additional information FEMA requests in order to evaluate the need for a major disaster declaration that authorizes IA, specifically requesting a narrative discussion on improvements to State services provided to individuals in response to a disaster.

Table A.12 provides estimates of annualized cost to respondents for the hour burdens for the collection of information.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS³⁷

Type of respondent	Form name/form No.	Number of respondents	Number of responses per respondent ³⁸	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate ³⁹	Total annual respondent cost
State, Local or Tribal Government.	Request for Presidential Disaster Declaration Major Disaster or Emergency/FEMA Form 010–0–13.	622	.5707	9.062	3,217	\$76.52	\$246,164.84
State, Local or Tribal Government.	Initial Data Gathering for Governor’s Request/No Form.	622	.57	24	8,520	33.10	282,012.00
Total .....	.....	622	.....	.....	11,737	.....	528,176.84

Estimated Cost: \$3,480,709.36.

The estimated annual cost to respondents for the hour burden is \$528,176.84. FEMA describes cost increases specifically for the proposed

rule in the previous Regulatory Analysis Section. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or

capital costs. The cost to the Federal government is unchanged at \$3,038,639.60.

³⁷ Note: Numbers rounded due to rounding in ROCIS.

³⁸ Note: The number of responses per respondent for entering in Request for Presidential Disaster Declaration Major Disaster or Emergency/FEMA Form 010–0–13 has been updated to 0.5707. FEMA

reanalyzed this number to more accurately reflect the change in the proposed rule. FEMA calculated 0.5707 based on the previous supporting statement’s total number of response hours, 3,195 divided by the number of hours, 9, resulting in 355, and then divided by 622.

³⁹ Note: The “Avg. Hourly Wage Rate” for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

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.

F. Privacy Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A "record" is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. *See* 5 U.S.C. 552a(a)(4). A "system of records" is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

FEMA completed a Privacy Threshold Analysis for this proposed rule. Any information will be collected in existing FEMA Form 010-0-13 and will still only include the Governor's point of contact and general office phone number as well as other State specific and disaster specific information of a non-personally-identifiable nature. The information received through the form is neither retrieved nor retrievable by personally identifiable information (PII). Any retrieval would be done by utilizing State specific or disaster specific information of a non-identifiable nature. This

rulemaking does not impact FEMA's collection of PII in the disaster declarations process and form and no Privacy Impact Assessment or System of Records Notice is required at this time.

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

Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

FEMA has reviewed this proposed rule under Executive Order 13132 and has determined that this rule does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The disaster assistance granted by a major disaster declaration addressed by this proposed rule is provided to individuals and families, and would not have tribal implications.

Moreover, this rule proposes to revise regulations intended to address a State's request for an IA declaration. Although Section 1110 of SRIA authorizes Indian Tribal governments to request a declaration directly, SRIA charged FEMA to implement that authority separately by rulemaking. Although FEMA is currently evaluating tribal declaration requests using its existing regulations, FEMA is implementing Section 1110 through a separate process, which will involve extensive consultation with Tribes, issuance of forthcoming pilot guidance, and eventually, regulations.

FEMA notes that Section 1109 of SRIA requires FEMA to develop this rulemaking "in cooperation with State, local, and Tribal emergency management agencies." To that end,

FEMA sought input from State, local and Tribal stakeholders at the Spring 2013 NEMA conference. In addition, in conjunction with the effort to initiate development of Section 1110 of SRIA, FEMA sought input from Tribal and other stakeholders via a **Federal Register** notice requesting comments on, among other things, the IA criteria that FEMA uses to make recommendations to the President for major disaster declarations in 44 CFR 206.48(b). 78 FR 15026, 15028-15029 (March 8, 2013). In addition, throughout March and April 2013, FEMA held listening sessions⁴⁰ with tribal leadership, their organizations and stakeholders to present information regarding FEMA programs, the Stafford Act and its amendment, and the declarations process.

FEMA received input that many members of Tribes do not have insurance and are not homeowners. Data regarding whether a home has insurance and is rented or owned is typically gathered during the PDA process. In addition, Tribes were concerned with the use of unemployment data at a county level because the Tribal unemployment level could be much higher. FEMA will always consider relevant information when evaluating the requests for a major disaster declaration that authorizes IA. If the county level unemployment level is inaccurate because Tribal unemployment is higher, then FEMA encourages Tribes to provide data that is more accurate to the State or FEMA in their disaster request. FEMA considered this input in the development of this rule, and welcomes additional comments on this matter.

H. Executive Order 13132, Federalism

Executive Order 13132, "Federalism," 64 FR 43255, August 10, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must

⁴⁰ Please refer to the following Web site for further information on FEMA's listening sessions as well FEMA's consultation efforts: <https://www.fema.gov/fema-tribal-affairs/consultation-archive-procedures-request-emergency-or-major-disaster-declarations>.

consult with State and local officials before implementing any such action.

FEMA has reviewed this proposed rule under Executive Order 13132 and has determined that this rule does not have a 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, and therefore does not have federalism implications as defined by the Executive Order. The disaster assistance granted by a major disaster declaration addressed by this proposed rule is provided to individuals and families, and would not have federalism implications.

I. Executive Orders 11988, Floodplain Management

Executive Order 11988, "Floodplain Management," 42 FR 26951, May 24, 1977, sets forth that each agency is required to provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and prescribe procedures to implement the policies and requirements of the Executive Order.

Before promulgating any regulation, an agency must determine whether the proposed regulations will affect a floodplain(s), and if so, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain(s). If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 is to promulgate a regulation that affects a floodplain(s), the agency must, prior to promulgating the regulation, design or modify the regulation in order to minimize potential harm to or within the floodplain, consistent with the agency's floodplain management regulations and prepare and circulate a notice

containing an explanation of why the action is proposed to be located in the floodplain.

The requirements of Executive Order 11988 apply in the context of the provision of Federal financial assistance relating to, among other things, construction and property improvement activities, as well as conducting Federal programs affecting a floodplain(s). The changes proposed in this rule would not have an effect on floodplain management. This proposed rule revises the criteria that FEMA considers when recommending an area eligible for IA under a major disaster declaration. A major disaster declaration recommendation to the President is an administrative action for FEMA's IA Program. When FEMA undertakes specific actions in administering IA that may have effects on floodplain management (e.g., placement of manufactured housing units on FEMA-constructed group sites; permanent or semi-permanent housing construction), FEMA follows the procedures set forth in 44 CFR part 9 to assure compliance with this Executive Order. This serves as the notice that is required by the EO.

J. Executive Order 11990, Protection of Wetlands

Executive Order 11990, "Protection of Wetlands," 42 FR 26961, May 24, 1977, sets forth that each agency must provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

In carrying out the activities described in Executive Order 11990, each agency must consider factors relevant to a proposal's effect on the survival and

quality of the wetlands. Among these factors are: Public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

The requirements of Executive Order 11990 apply in the context of the provision of Federal financial assistance relating to, among other things, construction and property improvement activities, as well as conducting Federal programs affecting land use. The changes proposed in this rule would not have an effect on land use or wetlands. This proposed rule revises the criteria that FEMA considers when recommending an area eligible for IA under a major disaster declaration. A major disaster declaration recommendation to the President is an administrative action for FEMA's IA Program. When FEMA undertakes specific actions in administering IA that may have such effects (e.g., placement of manufactured housing units on FEMA-constructed group sites; permanent or semi-permanent housing construction), FEMA follows the procedures set forth in 44 CFR part 9 to assure compliance with this Executive Order.

K. Executive Order 12898, Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 FR 7629, February 16, 1994, as amended by Executive Order 12948, 60 FR 6381, February 1, 1995, FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin. FEMA has incorporated environmental justice into its programs, policies, and activities, as well as this proposed rulemaking. This proposed rulemaking contains provisions that ensure that

FEMA's activities will not have a disproportionately high or adverse effect on human health or the environment or subject persons to discrimination because of race, color, or national origin. This proposed rule adds a provision specifically related to the demographics of a disaster impacted population. FEMA is requesting the demographics of a disaster impacted area because the demographics may identify additional needs that require a more robust community response and might otherwise delay a community's ability to recover from a disaster.

No action that FEMA can anticipate under this rule will have a disproportionately high and adverse human health or environmental effect on any segment of the population.

L. Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule, a concise general statement relating to the rule, including whether it is a major rule, the proposed effective date of the rule, a copy of any cost-benefit analysis, descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act, and any other information or statements required by relevant executive orders.

FEMA will send this rule to the Congress and to GAO pursuant to the CRA if the rule is finalized. The rule is not a "major rule" within the meaning of the CRA. It will not have an annual effect on the economy of \$100,000,000 or more, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 44 CFR Part 206GG

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, and Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Emergency Management Agency proposes to amend 44 CFR part 206, subpart B, as follows:

PART 206—FEDERAL DISASTER ASSISTANCE

■ 1. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*; Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113–2, 127 Stat. 43 (42 U.S.C. 5189a note).

■ 2. Revise § 206.48(b) to read as follows:

§ 206.48 Factors considered when evaluating a Governor's request for a major disaster declaration.

* * * * *

(b) *Factors for the Individual Assistance Program.* The following factors are used to evaluate the need for supplemental Federal assistance to individuals under the Stafford Act, as Federal assistance may not supplant the combined capabilities of a State, Tribal, or local government. Federal Individual Assistance, if authorized, is intended to assist eligible individuals and families when State, Tribal, and local government resources and assistance programs are overwhelmed. State fiscal capacity (44 CFR 206.48(b)(1)(i)) and uninsured home and personal property losses (44 CFR 206.48(b)(2)) are the principal factors that FEMA will consider when evaluating the need for supplemental Federal assistance under the Individuals and Households Program. If the need for supplemental Federal assistance under the Individuals and Households Program is not clear from the evaluation of the principal factors, FEMA will turn to the other factors to determine the level of need.

(1) *State fiscal capacity and resource availability.* FEMA will evaluate the availability of State resources, and where appropriate, any extraordinary circumstances that contributed to the absence of sufficient resources.

(i) *Fiscal capacity (Principal Factor for Individuals and Households Program).* Fiscal capacity is a State's potential ability to raise revenue from its own sources to respond to and recover from a disaster. The following data points are indicators of fiscal capacity.

(A) *Total Taxable Resources (TTR) of the State.* TTR is the U.S. Department of Treasury's annual estimate of the relative fiscal capacity of a State. A low TTR may indicate a greater need for

supplemental Federal assistance than a high TTR.

(B) *Gross Domestic Product (GDP) by State.* GDP by State is calculated by the Bureau of Economic Analysis. GDP by State may be used as an alternative or supplemental evaluation method to TTR.

(C) *Per capita personal income by local area.* Per capita personal income by local area is calculated by the Bureau of Economic Analysis. A low per capita personal income by local area may indicate a greater need for supplemental Federal assistance than a high per capita personal income by local area.

(D) *Other factors.* Other limits on a State's treasury or ability to collect funds may be considered.

(ii) *Resource availability.* Federal disaster assistance under the Stafford Act is intended to be supplemental in nature, and is not a replacement for State emergency relief programs, services, and funds. FEMA evaluates the availability of resources from State, Tribal, and local governments as well as non-governmental organizations and the private sector.

(A) *State, Tribal, and local government; Non-Governmental Organizations (NGO); and private sector activity.* State, Tribal, and local government, Non-Governmental Organizations, and private sector resources may offset the need for or reveal an increased need for supplemental Federal assistance. The State may provide information regarding the resources that have been and will be committed to meet the needs of disaster survivors such as housing programs, resources provided through financial and in-kind donations, and the availability of affordable (as determined by the U.S. Department of Urban and Housing Development's fair market rent standards) rental housing within a reasonable commuting distance of the impacted area.

(B) *Cumulative effect of recent disasters.* The cumulative effect of recent disasters may affect the availability of State, Tribal, local government, NGO, and private sector disaster recovery resources. The State should provide information regarding the disaster history within the last 24-month period, particularly those occurring within the current fiscal cycle, including both Presidential (public and individual assistance) and gubernatorial disaster declarations.

(C) *State services.* The State may provide information regarding the circumstances causing the State to lack the resources to provide sufficient services to its citizens.

(D) *Planning after prior disasters.* States are encouraged to develop and continuously improve their own disaster assistance programs. States should identify new and existing individual assistance programs as well as improvements to existing individuals assistance programs made as a result of previous disasters. A State's failure to address limitations and shortfalls identified by FEMA or the State after previous events will also be considered.

(2) *Uninsured home and personal property losses (Principal Factor for Individuals and Households Program).* Uninsured home and personal property losses may suggest a need for supplemental Federal assistance. The State may provide the following preliminary damage assessment data:

- (i) The cause of damage.
- (ii) The jurisdictions impacted and concentration of damage.
- (iii) The number of homes impacted and degree of damage.
- (iv) The estimated cost of assistance.
- (v) The homeownership rate of impacted homes.

(vi) The percentage of affected households with sufficient insurance coverage appropriate to the peril.

(vii) Other relevant preliminary damage assessment data.

(3) *Disaster impacted population profile.* The demographics of a disaster impacted population may identify additional needs that require a more robust community response and delay a community's ability to recover from a disaster. FEMA will consider demographics of the impacted communities for the following data points as reported by the U.S. Census Bureau or other Federal agencies:

- (i) The percentage of the population for whom poverty status is determined.
- (ii) The percentage of the population already receiving government assistance such as Supplemental Security Income

and Supplemental Nutrition Assistance Program benefits.

(iii) The pre-disaster unemployment rate.

(iv) The percentage of the population that is 65 years old and older.

(v) The percentage of the population 18 years old and younger.

(vi) The percentage of the population with a disability.

(vii) The percentage of the population who speak a language other than English and speak English less than "very well."

(viii) Any unique considerations regarding American Indian and Alaskan Native Tribal populations raised in the State's request for a major disaster declaration that may not be reflected in the data points referenced in paragraphs (b)(3)(i)–(vii) of this section.

(4) *Impact to community infrastructure.* The following impacts to a community's infrastructure may adversely affect a population's ability to safely and securely reside within the community.

(i) *Lifesaving and life-sustaining services.* The effects of a disaster may cause disruptions to or increase the demand for lifesaving and life-sustaining services, necessitate a more robust response, and may delay a community's ability to recover from a disaster. The State may provide information regarding the impact on life saving and life sustaining services for a period of greater than 72 hours. Such services include but are not limited to police, fire/EMS, hospital/medical, sewage, and water treatment services.

(ii) *Essential community services.* The effects of a disaster may cause disruptions to or increase the demand for essential community services and delay a community's ability to recover from a disaster. The State may provide information regarding the impact on essential community services for a

period greater than 72 hours. Such services include but are not limited to schools, social services programs and providers, child care, and eldercare.

(iii) *Transportation infrastructure and utilities.* Transportation infrastructure and utility disruptions may render housing uninhabitable or inaccessible. Such conditions may also affect the delivery of life sustaining commodities, provision of emergency services, ability to shelter in place, and efforts to rebuild. The State may provide information regarding the impact on transportation infrastructure and utilities for a period of greater than 72 hours.

(5) *Casualties.* The number of individuals who are missing, injured, or deceased due to a disaster may indicate a heightened need for supplemental Federal disaster assistance. The State may report the number of missing, injured, or deceased individuals.

(6) *Disaster related unemployment.* The number of disaster survivors who lost work or became unemployed due to a disaster and who do not qualify for standard unemployment insurance may indicate a heightened need for supplemental Federal assistance. This usually includes the self-employed, service industry workers, and seasonal workers such as those employed in tourism, fishing, or agriculture industries. The State may provide an estimate of the number of disaster survivors impacted under this paragraph as well as information regarding major employers affected.

Dated: October 29, 2015.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–28570 Filed 11–10–15; 8:45 am]

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FEDERAL REGISTER

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No. 218

November 12, 2015

Part IV

The President

Proclamation 9365—World Freedom Day, 2015

Presidential Documents

Title 3—**Proclamation 9365 of November 6, 2015****The President****World Freedom Day, 2015****By the President of the United States of America****A Proclamation**

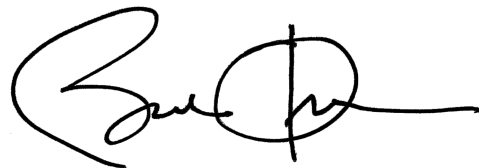
Twenty-six years ago, after nearly three decades of separating family and friends, the Berlin Wall crumbled under the force of popular will—reuniting Germans from East and West and providing hope to all who believed in the power of a people yearning to be free. The fall of the Iron Curtain liberated a continent from the grip of corrupt dictatorships, and its demise marked a victory for democratic rule over forces that had for too long sealed out the fresh air of freedom. On this day, we honor those who braved extreme hardship in pursuit of progress and reunification, and we reaffirm our support for the citizens of the world who still face obstacles to a better, brighter, and more just future.

In standing with all those behind the Curtain who felt the urgency of the time and who sought a democracy of their own, the United States recognized our own past: A common struggle for individual rights, security, and human dignity. During a stirring defense of these ideals, it was an American President who famously pledged solidarity with Berliners, and another who issued a bold call to tear down what stood between Germany and the blessings of liberty. As we celebrate our friendship with the German people today, we reflect on our history and look to the future with a shared notion of optimism and opportunity.

Through their victory, the people of Berlin inspired the world. Their resolve reminds us that though the scourge of oppression endures, it can never outlast the spirit of a people determined to live free. On this day, let us carry forward the call that echoes through the ages—“Ich bin ein Berliner”—by supporting those who still struggle against tyranny and intolerance, and who continue to seek the everlasting light of liberty.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 9, 2015, as World Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities, reaffirming our dedication to freedom and democracy.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of November, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at <http://www.gpo.gov/fdsys>. Some laws may not yet be available.

H.R. 313/P.L. 114-75

Wounded Warriors Federal Leave Act of 2015 (Nov. 5, 2015; 129 Stat. 640)

H.R. 322/P.L. 114-76

To designate the facility of the United States Postal Service

located at 16105 Swingley Ridge Road in Chesterfield, Missouri, as the "Sgt. Zachary M. Fisher Post Office". (Nov. 5, 2015; 129 Stat. 642)

H.R. 323/P.L. 114-77

To designate the facility of the United States Postal Service located at 55 Grasso Plaza in St. Louis, Missouri, as the "Sgt. Amanda N. Pinson Post Office". (Nov. 5, 2015; 129 Stat. 643)

H.R. 324/P.L. 114-78

To designate the facility of the United States Postal Service located at 11662 Gravois Road in St. Louis, Missouri, as the "Lt. Daniel P. Riordan Post Office". (Nov. 5, 2015; 129 Stat. 644)

H.R. 558/P.L. 114-79

To designate the facility of the United States Postal Service located at 55 South Pioneer Boulevard in Springboro, Ohio, as the "Richard 'Dick' Chenault Post Office Building". (Nov. 5, 2015; 129 Stat. 645)

H.R. 623/P.L. 114-80

DHS Social Media Improvement Act of 2015 (Nov. 5, 2015; 129 Stat. 646)

H.R. 774/P.L. 114-81

Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 (Nov. 5, 2015; 129 Stat. 649)

H.R. 1442/P.L. 114-82

To designate the facility of the United States Postal Service located at 90 Cornell Street in Kingston, New York, as the "Staff Sergeant Robert H. Dietz Post Office Building". (Nov. 5, 2015; 129 Stat. 671)

H.R. 1884/P.L. 114-83

To designate the facility of the United States Postal Service located at 206 West Commercial Street in East Rochester, New York, as the "Officer Daryl R. Pierson Memorial Post Office Building". (Nov. 5, 2015; 129 Stat. 672)

H.R. 3059/P.L. 114-84

To designate the facility of the United States Postal Service located at 4500 SE 28th Street, Del City, Oklahoma, as the James Robert Kalsu Post Office Building. (Nov. 5, 2015; 129 Stat. 673)

S. 1362/P.L. 114-85

To amend title XI of the Social Security Act to clarify

waiver authority regarding programs of all-inclusive care for the elderly (PACE programs). (Nov. 5, 2015; 129 Stat. 674)

S. 2162/P.L. 114-86

Librarian of Congress Succession Modernization Act of 2015 (Nov. 5, 2015; 129 Stat. 675)

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