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The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1038; Product Identifier 2017–CE–024–AD; Amendment 39–19197; AD 2018–04–02]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Viking Air Limited Models DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and address an unsafe condition on an aviation product. The MCAI describes the unsafe condition as aileron cable wear; fouling at the wing root rib, fuselage skin, and wing root rib fairlead; and/or fraying of the cable from the root rib fairlead. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective March 27, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 27, 2018.

ADDRESSES: You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1038; or in person at Docket Operations, U.S. Department of Transportation, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

For service information identified in this AD, contact Viking Air Limited Technical Support, 1959 De Havilland Way, Sidney, British Columbia, Canada, V8L 5V5; telephone: (North America) (866) 492–8527; fax: (250) 656–0673; email: *technical.support@vikingair.com;* internet: *http://www.vikingair.com/support/service-bulletins*. You may view this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for Docket No. FAA–2017–1038.

FOR FURTHER INFORMATION CONTACT: James Delisio, Program Manager, Continued Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Westbury, New York 11590; telephone: (516) 228–7300; fax: (516) 794–5531; email: *9-avs-nyaco-cos@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 Viking Air Limited Models DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes. The NPRM was published in the **Federal Register** on November 6, 2017 (82 FR 51367). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country.

The MCAI states:

> There have been reports of accelerated aileron cable wear because of contact with the fuselage skin cut-out or the wing root rib. Wear that is not detected can lead to failure of the aileron cable and loss of control of the aeroplane.
>
> The root cause of this problem has not yet been identified. This [Transport Canada] AD requires inspection of the aeroplane and reporting of the inspection results to Viking Air Ltd. This [Transport Canada] AD is considered an interim action and further AD action may follow.
>
> Aileron cables are typically replaced at intervals of 60 months in accordance with the DHC–6 maintenance schedule.

The MCAI can be found in the AD docket on the internet at: *https://www.regulations.gov/document?D=FAA-2017-1038-0002*.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal and the FAA's response to the comment.

Request a Change to the Corrective Actions

Mathew Carlson stated the proposed actions are not necessary. Although the root cause has not yet been determined, the cause appears obvious and the appropriate actions to take are obvious as well. The commenter stated they believe the corrective actions proposed are unnecessary, and the root cause is an alignment issue between pulleys and the fuselage cutout. The commenter believes the corrective action should be to trim the fuselage cutout for better clearance and to not require the repetitive inspections.

We do not agree with the commenter. While it is possible the commenter's root cause/solution is correct, we disagree that the cable inspection and/or replacement has no benefit. Until enough information is gathered and analyzed to accurately determine the root cause of the issue, the repetitive inspection (and replacement if necessary) is the action necessary to address the unsafe condition and provide a safe method to continue airplane operation.

We have not changed this AD based on this comment.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the 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 for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Viking Air Limited issued DHC–6 Twin Otter Service Bulletin Number: V6/0022, Revision B, dated June 13, 2014. The service information describes

procedures for initial and repetitive inspections of the aileron cable for aileron cable wear; fouling at the wing root rib, fuselage skin, and wing root rib fairlead; and/or fraying of the cable from the root rib fairlead; and replacement of the aileron cables as 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 the AD.

Costs of Compliance

We estimate that this AD will affect 141 products of U.S. registry. We also estimate that it would take about 20 work-hours per product to comply with the basic requirements 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 $239,700, or $1,700 per product.

In addition, the following is an estimate of possible necessary follow-on replacement actions. We have no way of determining the number of products that may need these actions.

Action	Work-hours *	Labor cost ($85/hour)	Parts cost	Cost per product
Replace 1 cable	6	$510	$244	$754
Replace 2 cables (on the same wing)	8	680	458	1,138
Replace 2 cables (one on each wing)	12	1,020	488	1,508
Replace all 4 cables (2 per wing)	16	1,360	916	2,336

* Work-hours includes access, testing, and close-up.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify 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* by searching for and locating Docket No. FAA–2017–1038; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 AD:

2018–04–02 Viking Air Limited: Amendment 39–19197; Docket No. FAA–2017–1038; Product Identifier 2017–CE–024–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective March 27, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Viking Air Limited Models DHC–6–1, DHC–6–100, DHC–6–200,

DHC–6–300, and DHC–6–400 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and address an unsafe condition on an aviation product. The MCAI describes the unsafe condition as aileron cable wear; fouling at the wing root rib, fuselage skin, and wing root rib fairlead; and/or fraying of the cable from the root rib fairlead. We are issuing this AD to identify and address wear on the aileron cable fuselage skin cut-out and on the wing root rib fairlead, and any fraying of the cable from the root rib fairlead, which could lead to failure of the aileron cable and loss of control.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (5) of this AD:

(1) Within the next 50 hours time-in-service (TIS) after March 27, 2018 (the effective date of this AD) or before the aileron cables have accumulated 300 hours TIS, whichever occurs later, inspect the aileron cables following the Accomplishment Instructions in Viking Air Limited Service Bulletin V6/0022, Revision B, dated June 13, 2014 (SB V6/0022, Revision B). Inspect repetitively thereafter at intervals not to exceed 500 hours TIS, but not to exceed five inspections (the initial and four repetitives).

(2) If any discrepancies are found during any of the inspections required in paragraph (f)(1) of this AD, before further flight, replace the aileron cable(s) following the Accomplishment Instructions in SB V6/0022, Revision B.

(3) Upon completion of the initial and four repetitive inspections detailed in paragraph (f)(1) of this AD, resume the inspections specified in the maintenance program.

(4) Within 30 days after completion of each inspection detailed in paragraph (f)(1) of this AD, report the results of each inspection to Viking Air Limited in accordance with the reporting instructions in SB V6/0022, Revision B.

(5) Installation of new aileron cables or re-installation of existing cables that have been removed for any reason re-starts the inspections required in paragraph (f)(1) of this AD.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: James Delisio, Program Manager, Continued Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Westbury, New York 11590; telephone: (516) 228–7300; fax: (516) 794–5531; email: *9-avs-nyaco-cos@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *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 Branch, FAA; or Transport Canada; or Viking Air Limited's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

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

(h) Related Information

Refer to MCAI Transport Canada AD Number CF–2017–20, dated June 7, 2017, for related information. The MCAI can be found in the AD docket on the internet at: *https://www.regulations.gov/document?D=FAA-2017-1038-0002.*

(i) 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) Viking Air Limited Service Bulletin V6/0022, Revision B, dated June 13, 2014.

(ii) Reserved.

(3) For Viking Air Limited service information identified in this AD, contact Viking Air Limited Technical Support, 1959 De Havilland Way, Sidney, British Columbia, Canada, V8L 5V5; telephone: (North America) (866) 492–8527; fax: (250) 656–0673; email: *technical.support@vikingair.com;* internet: *http://www.vikingair.com/support/service-bulletins.*

(4) You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call [(816) 329–4148. In addition, you can access this service information on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1038.

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

Issued in Kansas City, Missouri, on February 12, 2018.

Melvin J. Johnson,

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

[FR Doc. 2018–03329 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 0

Delegation of Limited Authority

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is publishing a rule that delegates certain limited functions where the Commission is unable to act because it lacks a quorum. The functions delegated are those in which no party or intervenor has a right to petition the agency for discretionary review or in which a party or intervenor has waived such a right. In matters in which at least one Commissioner determines to participate, the delegation is made to the participating Commissioner or to the body of Commissioners who are participating. In matters in which no Commissioner is participating, the General Counsel has authority to carry out the delegated functions. This delegation is not intended to alter or affect existing delegations to Commission staff.

DATES: These amendments are effective February 20, 2018.

FOR FURTHER INFORMATION CONTACT: David C. Shonka, Acting General Counsel, (202) 326–2222, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Commission Rule 0.7, 16 CFR 0.7, provides that the Commission, pursuant to Reorganization Plan No. 4 of 1961 (''Plan No. 4'') (75 Stat. 837, 26 FR 6191), may delegate, by published order or rule, certain of its functions to a division of the Commission, an individual Commissioner, or others within the Commission. As noted in section 1(a) of Plan No. 4, this authority supplements the Commission's inherent authority to delegate its functions.

The Commission has determined that there may be instances in which it would be unable to resolve or act in certain matters in the absence of a quorum for the transaction of business. *See* Commission Rule 4.14(b), 16 CFR 4.14(b) (Commission quorum). Under these circumstances, the Commission believes that a delegation of its authority to act to resolve or advance matters in which no party or intervenor has a right to petition the agency for discretionary review or in which any such party or intervenor has waived such a right, serves the public interest. This delegation is not intended to alter or affect existing delegations to Commission staff.

The delegate or delegates are authorized to act (1) in instances in which no party or intervenor would be adversely affected by the action and entitled to seek discretionary review by the full Commission, and (2) in matters where a party or intervenor would be adversely affected and entitled to seek such review, but the affected party or intervenor has waived such right, as provided by section 1(b) of Plan No. 4. In either instance, the delegation would not adversely affect the procedural rights of the relevant party or intervenor.

In matters in which at least one Commissioner is participating, the delegation is made to the participating Commissioner or to the body of Commissioners who are participating. In matters in which no Commissioner is available or no Commissioner is participating, the General Counsel in consultation, where appropriate, with the Directors of the Bureaus of Consumer Protection, Competition, and Economics has authority to carry out these limited delegated actions without power of redelegation.

The instant delegation is only authorized for those matters in which the Commission lacks a quorum as set forth in Commission Rule 4.14(b), 16 CFR 4.14(b) (Commission quorum). The delegation is not in effect in instances in which the Commission has a quorum.

This delegation does not extend to the authority to act as an Administrative Law Judge in a formal administrative adjudication or impact any statutory requirements specifically requiring action by a quorum of Commissioners.

Regulatory Flexibility Act

The Commission certifies that these new regulations, which deal solely with internal policies governing FTC personnel, do not require an initial or final regulatory analysis under the Regulatory Flexibility Act because they will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

Paperwork Reduction Act

The regulations adopted herein do not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

Administrative Procedure Act

The amended rule is published in final form without the opportunity for public notice and comment because it is a rule of ''agency organization, procedure, or practice.'' *See* 5 U.S.C. 553(b)(3)(A).

List of Subjects in 16 CFR Part 0

Administrative practice and procedure, Organization, Delegation of functions.

For the reasons stated in the preamble, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A, of the Code of Federal Regulations, as follows:

PART 0—ORGANIZATION

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

Authority: 5 U.S.C. 552(a)(1); 15 U.S.C. 46(g).

■ 2. Revise § 0.7 to read as follows:

§ 0.7 Delegation of functions.

(a) The Commission, under the authority provided by Reorganization Plan No. 4 of 1961, may delegate, by published order or rule, certain of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, and retains a discretionary right to review such delegated action upon its own initiative or upon petition of a party to or an intervenor in such action.

(b) The Commission delegates its functions, subject to certain limitations, when no quorum is available for the transaction of business. The delegate or delegates are authorized to act in instances in which no party or intervenor would be adversely affected by the delegated action and entitled to seek review by the Commission, as provided by section 1(b) of Reorganization Plan No. 4 of 1961, or in instances in which all such adversely affected parties or intervenors have waived such a right. In actions in which at least one Commissioner is participating, this delegation is to the participating Commissioner or to the body of Commissioners who are participating. In actions in which no Commissioner is available or no Commissioner is participating, the General Counsel in consultation, where appropriate, with the Directors of the Bureaus of Consumer Protection, Competition, and Economics shall exercise this delegated authority without power of redelegation. This delegation does not alter or affect other delegations to Commission staff. This delegation is only authorized for those instances in which the Commission lacks a quorum as set forth in Commission Rule 4.14(b), 16 CFR 4.14(b) (Commission quorum).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2018–03296 Filed 2–16–18; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0060]

Drawbridge Operation Regulation; Banana River, Indian Harbour Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Mathers Bridge across the Banana River, mile 0.5, at Indian Harbour Beach, FL. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. This deviation will allow the bridge to open for vessels at specific times.

DATES: This deviation is effective without actual notice from February 20, 2018 through 6 a.m. on August 4, 2018. For the purposes of enforcement, actual notice will be used from 6 a.m. on February 5, 2018 until February 20, 2018. Comments and relate material must reach the Coast Guard on or before August 4, 2018.

ADDRESSES: You may submit comments identified by docket number USCG-2017–0060 using Federal eRulemaking Portal at *http://www.regulations.gov*.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this test

deviation, call or email LT Allan Storm, Sector Jacksonville, Waterways Management Division, U.S. Coast Guard; telephone 904–714–7616, email *Allan.H.Storm@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Background, Purpose and Legal Basis

Mathers Bridge across the Banana River, mile 0.5, at Indian Harbour Beach, FL is a swing bridge. It has a vertical clearance of 7 feet at mean high water in the closed position and a horizontal clearance of 74 feet and 81 feet. Presently, the bridge operates in accordance with 33 CFR 117.263.

On January 12, 2017, the Brevard County Public Works Department, the bridge owner, requested the Coast Guard consider allowing the bridge to not open for vessels except every 30 minutes on the hour and half hour. The county requested this action in order to reduce traffic delays caused by the numerous openings of the bridge.

On April 24, 2017, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Banana River, Indian Harbour Beach, FL in the **Federal Register** (82 FR 18877) and received minimul comments. The City of Indian Harbour Beach, FL requested to have the comment period re-opened as they believed their constituency did not have awareness of the initial notice and comment period. On October 23, 2017, we published a notice of proposed rulemaking; reopening comment period entitled Drawbridge Operation Regulation; Banana River, Indian Harbour Beach, FL in the **Federal Register** (82 FR 48939).

Due to the numerous comments received both for and against the proposed rule, the Coast Guard is publishing this temporary deviation to test the proposed schedule change to determine whether a permanent change is appropriate to better balance the needs of maritime and vehicle traffic.

Under this test deviation, in effect from 6 a.m. on February 5, 2018 to 6 a.m. on August 4, 2018, the bridge shall open for vessels requesting passage on the hour and half hour, from 6 a.m. to 10 p.m., Sunday through Thursday. On Friday, Saturday and all Federal holidays, 24 hours a day, the bridge shall open for vessels on the hour and half hour. At all other times, the bridge shall open on signal if at least two hours notice is given. Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass through the bridge in closed position.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

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

II. Public Participation and Request for Comments

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

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

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

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

Dated: February 6, 2018.

Barry L. Dragon,

Director, Bridge Branch, Seventh Coast Guard District.

[FR Doc. 2018–03347 Filed 2–16–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0152; FRL–9972–24]

Quizalofop ethyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of quizalofop ethyl in or on field corn forage, grain, and stover. E.I. du Pont de Nemours and Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 20, 2018. Objections and requests for hearings must be received on or before April 23, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0152, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document

applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*. To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/test-guidelines-pesticides-and-toxic-substances*.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0152 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 23, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0152, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/where-send-comments-epa-dockets*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

II. Summary of Petitioned-For Tolerances

In the **Federal Register** of March 29, 2011 (76 FR 17374) (FRL–8867–4), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F7822) by E.I. du Pont de Nemours and Company, 1007 Market Street, Wilmington, DE 19898. The petition requested that 40 CFR 180.441 be amended by establishing tolerances for residues of the herbicide quizalofop-P-ethyl, ethyl-2-[4-(6-chloroquinoxalin-2-yl-oxy)phenoxy]propanoate, in or on corn, forage at 0.01 parts per million (ppm); corn, grain at 0.01 ppm; and corn, stover at 0.03 ppm. That document referenced a summary of the petition prepared by E.I. du Pont de Nemours and Company, the registrant, which is available in the docket, *http://www.regulations.gov*. A comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA is establishing higher tolerance levels for corn forage and corn grain than the petition requested. In addition, the names of the commodities for which tolerances are being established in this action differ slightly from what the petition requested. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for quizalofop ethyl, including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with quizalofop ethyl follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Quizalofop ethyl is a 50/50 racemic mixture of R- and S-enantiomers. Quizalofop-P-ethyl, the purified R-enantiomer, is the pesticidally-active isomer. Since the toxicological profiles of quizalofop ethyl and quizalofop-P-ethyl are similar, the available toxicity studies are adequate to support both compounds. For the purposes of this final rule, both quizalofop ethyl and quizalofop-P-ethyl are collectively referred to as ''quizalofop ethyl.''

Quizalofop ethyl has very low acute toxicity via the oral, dermal, and inhalation routes of exposure, is not an eye or skin irritant, and is not a skin sensitizer. There were no adverse effects observed in the oral toxicity studies that could be attributable to a single-dose exposure.

Repeated-dose toxicity studies indicate the liver as the target organ, as evidenced by increased liver weights and histopathological changes. Following oral administration, quizalofop ethyl is rapidly excreted via urine and feces. In the subchronic oral toxicity rat study, effects of decreased body weight gains, increased liver weight, and centrilobular liver cell enlargement were observed. In the subchronic oral toxicity dog study, an increased incidence of testicular atrophy was observed. In the combined

chronic toxicity/carcinogenicity study in rats, an increased incidence of centrilobular liver cell enlargement was observed in both sexes and mild anemia in males.

No dermal toxicity effects were observed in the subchronic dermal toxicity rabbit study at up to the limit dose. Subchronic inhalation toxicity is assumed to be equivalent to oral toxicity. In the chronic oral toxicity dog study, no toxicity effects were observed at the highest dose tested.

In the rat and rabbit developmental toxicity studies, maternal effects including decreased body weight gains and food consumption were observed; no developmental effects were observed up to the highest dose tested. In the two-generation reproduction toxicity study in rats, maternal effects including decreased body weight and decreased body weight gains were observed at the same dose level that resulted in prenatal and postnatal effects (decreased percentage of pups born alive and decreased pup weights); no evidence of adverse effects on the functional development of pups was observed.

Although tumors were observed in male and female mice after exposure to quizalofop ethyl, the overall evidence for carcinogenicity is weak, as discussed in supporting documents. Additionally, the point of departure used for establishing the chronic reference dose for quizalofop ethyl is significantly lower (30X) than the dose that induced tumors in male and female mice. EPA has determined that quantification of cancer risk using a non-linear approach would adequately account for all chronic toxicity, including carcinogenicity, which could result from exposure to quizalofop ethyl.

Based on the results of acceptable toxicity studies, quizalofop ethyl does not show evidence of neurotoxicity or neuropathology. Quizalofop ethyl showed no evidence of immunotoxicity.

Specific information on the studies received and the nature of the adverse effects caused by quizalofop ethyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document *Quizalofop-P-ethyl. Human Health Risk assessment in Support of the Proposed New Use on Rice* in docket ID number EPA–HQ–OPP–2015–0412.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for quizalofop ethyl used for human risk assessment is discussed in Unit II.B. of the final rule published in the **Federal Register** of December 1, 2016 (81 FR 86581) (FRL–9950–89).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to quizalofop ethyl, EPA considered exposure under the petitioned-for tolerances as well as all existing quizalofop ethyl tolerances in 40 CFR 180.441. EPA assessed dietary exposures from quizalofop ethyl in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure. No such effects were identified in the toxicological studies for quizalofop ethyl; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA incorporated tolerance-level residues, 100 percent crop treated (PCT) for all commodities, and default processing factors for all processed commodities except sunflower oil.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that the chronic reference dose will be protective of any potential carcinogenicity; therefore, a separate dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for quizalofop ethyl. Tolerance-level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for quizalofop ethyl in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of quizalofop ethyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Modified Tier 1 Rice Model and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of quizalofop ethyl for chronic exposures for non-cancer assessments are estimated to be 127 parts per billion (ppb) for surface water and 89 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration value of 127 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Quizalofop ethyl is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other

substances that have a common mechanism of toxicity.''

EPA has not found quizalofop ethyl to share a common mechanism of toxicity with any other substances, and quizalofop ethyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that quizalofop ethyl does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* As summarized in Unit III.A., results from the rat and rabbit developmental toxicity and the two-generation rat reproduction toxicity studies indicated no qualitative or quantitative evidence of increased susceptibility in developing fetuses or in the offspring following prenatal and/or postnatal exposure to quizalofop ethyl.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for quizalofop ethyl is complete.

ii. There is no indication that quizalofop ethyl is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no qualitative or quantitative evidence that quizalofop ethyl results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to quizalofop ethyl in drinking water. These assessments will not underestimate the exposure and risks posed by quizalofop ethyl.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists. Since there are no residential uses for quizalofop ethyl, the aggregate risk assessment only includes exposure estimates from dietary consumption of food and drinking water.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single-dose exposure was identified and no acute dietary endpoint was selected. Therefore, quizalofop ethyl is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to quizalofop ethyl from food and water will utilize 97% of the cPAD for all infants less than 1 year old, the population group receiving the greatest exposure.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because there are no residential uses, quizalofop ethyl is not expected to pose short- or intermediate-term risk.

4. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.A., EPA has concluded that regulating on the chronic reference dose will be protective of potential carcinogenicity. Based on the results of the chronic risk assessment, EPA concludes that quizalofop ethyl is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to quizalofop ethyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies (Morse Meth-147, a high performance liquid chromatography (HPLC) method using fluorescence detection for plant commodities including corn; and AMR–515–86, AMR–623–86, AMR–627–86, AMR–845–87, and AMR–846–87, HPLC methods using ultraviolet detection for livestock commodities) are available to enforce the tolerance expression.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for quizalofop ethyl.

C. Response to Comments

EPA received one comment in response to the Notice of Filing that stated, in part, ''. . . only zero residue.'' (The remainder of the comment related to the other petitions that were discussed in that Notice.) Although this commenter is encouraging EPA to deny this petition, the commenter provides no information for EPA to take into consideration in making the safety finding under the

FFDCA. Upon review of the available information, EPA concludes that these tolerances would be safe.

D. Revisions to Petitioned-for Tolerances

EPA changed the proposed commodity names to the correct commodity definitions as follows: From ''corn, forage'' to ''corn, field, forage;'' ''corn, grain'' to ''corn, field, grain;'' and ''corn, stover'' to ''corn, field, stover.'' Also, EPA is establishing higher tolerance levels for corn, field, forage and corn, field, grain than what was requested based on results from use of the Organisation for the Economic Co-operation and Development (OECD) MRL calculation procedures.

V. Conclusion

Therefore, tolerances are established for residues of quizalofop ethyl, in or on corn, field, forage at 0.02 ppm; corn, field, grain at 0.02 ppm; and corn, field, stover at 0.03 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001); Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); or Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA)(2 U.S.C. 1501 *et seq.*)

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA)(15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 2, 2018.

Donna S. Davis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.441, add alphabetically the commodities ''Corn, field, forage'', ''Corn, field, grain'', and ''Corn, field, stover'' to the table in paragraph (a)(1) to read as follows:

§ 180.441 Quizalofop ethyl; tolerances for residues.

(a) * * * (1) * * *

Commodity	Parts per million
* * * * *	
Corn, field, forage	0.02
Corn, field, grain	0.02
Corn, field, stover	0.03
* * * * *	

* * * * *

[FR Doc. 2018–03412 Filed 2–16–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 160920866–7167–02]

RIN 0648–XF902

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2018 total allowable catch of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), February 14, 2018, through 1200 hours, A.l.t., March 10, 2018.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council

under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2018 total allowable catch (TAC) of pollock in Statistical Area 630 of the GOA is 9,025 metric tons (mt) as established by the final 2017 and 2018 harvest specifications for groundfish in the GOA (82 FR 12032, February 27, 2017) and inseason adjustment (82 FR 60327, December 20, 2017).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2018 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,875 mt and is setting aside the remaining 150 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 13, 2018.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 14, 2018.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–03388 Filed 2–14–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 34
Tuesday, February 20, 2018

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0111; Product Identifier 2017–NM–059–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2017–07–07, for certain Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes. AD 2017–07–07 requires repetitive inspections of certain fastener holes, and related investigative and corrective actions if necessary. Since we issued AD 2017–07–07, we have determined that certain other airplanes could also be affected by the unsafe condition specified in AD 2017–07–07. This proposed AD would retain the requirements of AD 2017–07–07 and expand the applicability. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by April 6, 2018.

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

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

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAL, 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 Standards Branch, 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–2018–0111; 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 Section, Transport Standards Branch, 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 proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0111; Product Identifier 2017–NM–059–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

We issued AD 2017–07–07, Amendment 39–18845 (82 FR 18547, April 20, 2017) (''AD 2017–07–07''), for certain Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes with manufacturer serial numbers (MSN) 0176 through 0915 inclusive. These airplanes have Airbus modification 44360 embodied in production. AD 2017–07–07 was prompted by a report of cracking at fastener holes located at frame (FR) 40 on the lower shell panel junction. AD 2017–07–07 requires repetitive inspections of certain fastener holes, and related investigative and corrective actions if necessary. Airbus then introduced the modification 55792 to reinforce the fuselage at FR40. We issued AD 2017–07–07 to detect and correct cracking at FR40 on the lower shell panel junction; such cracking could lead to reduced structural integrity of the fuselage.

Since we issued AD 2017–07–07, we have determined that airplanes in the post-modification 55792 configuration could be also affected by crack initiation and propagation at fastener holes located at FR40 on the lower shell panel junction.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0063, dated April 12, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–200, A330–300, and A340–200 series airplanes, and Model A340–312 and –313 airplanes. The MCAI states:

> During full scale fatigue test of the Frame (FR) 40 to fuselage skin panel junction, fatigue damage was found. Corrective actions consisted of in-service installation of an internal reinforcing strap on the related junction, as currently required by DGAC [Direction Générale de l'Aviation Civile] France AD 1999–448–126(B), which refers to Airbus Service Bulletin (SB) A340–53–4104 Revision 02, and [DGAC] AD 2001–070(B), which refers to Airbus SB A330–53–3093 Revision 04; retrofit improvement of internal reinforcing strap fatigue life through recommended Airbus SB A330–53–3145; and introducing a design improvement in production through Airbus mod 44360.

After those actions were implemented, cracks were found on both left-hand (LH) and right-hand (RH) sides on internal strap, butt strap, keel beam fitting, or forward fitting FR40 flange. These findings were made during embodiment of a FR40 web repair on an A330 aeroplane, and during keel beam replacement on an A340 aeroplane, where the internal strap was removed and a special detailed inspection (SDI) was performed on several holes.

This condition, if not detected and corrected, could affect the structural integrity of the centre fuselage of the aeroplane.

Prompted by these findings, Airbus issued SB A330–53–3215 and SB A340–53–4215, providing inspection instructions. Consequently, EASA issued AD 2014–0136 [which corresponds to FAA AD 2017–07–07] to require repetitive SDI (rototest) of 10 fastener holes located at the FR40 lower shell panel junction on both LH and RH sides and, depending on findings, accomplishment of applicable corrective action(s).

Since that [EASA] AD was issued, prompted by the results of complementary fatigue analyses, it was determined that post-mod 55792 aeroplanes could be also affected by crack initiation and propagation at this area of the fuselage. These analyses demonstrated that post-mod 55792 aeroplanes must follow the same maintenance program as aeroplanes in post-mod 55306 and pre-mod 55792 configuration. Consequently, Airbus published SB A330–53–3215 Revision 02 and SB A340–53–4215 Revision 02 to expand the Effectivity accordingly.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2014–0136, which is superseded, which now also apply to aeroplanes in post-mod 55792 configuration [the applicability identifies airplanes in post-mod 44360 configuration].

AD 2017–07–07 includes Model A340–311 airplanes in its applicability. Airbus Model A340–311 airplanes are not identified in the applicability of this proposed AD because those airplanes are not affected by the identified unsafe condition. All of those airplanes are in the pre-Airbus modification 44360 configuration. The MCAI does not include Model A340–311 airplanes in its applicability.

The compliance time ranges between 20,000 flight cycles or 65,400 flight hours and 20,800 flight cycles or 68,300 flight hours, depending on airplane utilization and configuration. The repetitive inspection interval ranges between 14,000 flight cycles or 95,200 flight hours and 24,600 flight cycles or 98,700 flight hours, depending on airplane utilization and configuration. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0111.

Related Service Information Under 1 CFR Part 51

Airbus has issued Airbus Service Bulletin A330–53–3215, Revision 02, dated November 23, 2016 (''A330–53–3215, R2''); and Airbus Service Bulletin A340–53–4215, Revision 02, dated November 23, 2016. This service information describes procedures for repetitive rototest inspections of certain fastener holes, and related investigative and corrective actions if necessary. These documents are distinct since they apply to different airplane models. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination 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.

Differences Between This Proposed AD and the MCAI or Service Information

The MCAI includes Model A340–211 airplanes in its applicability. Airbus Model A340–211 airplanes are not identified in the applicability of this proposed AD because those airplanes are not affected by the identified unsafe condition. All of those airplanes are in the pre-Airbus modification 44360 configuration. We have coordinated this difference with EASA.

Paragraph 1.E. ''Compliance,'' of A330–53–3215, R2, specifies weight variant (WV) 050 in the condition column of table 1, configuration 003. We have determined that for the purposes of this AD, WV060 and WV080 are also affected.

Costs of Compliance

We estimate that this proposed AD affects 99 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	42 work-hours × $85 per hour = $3,570 per inspection cycle.	$0	$3,570 per inspection cycle	$353,430 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	46 work-hours × $85 per hour = $3,910	$2,358	$6,268

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

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

Regulatory Findings

We determined that this 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 removing Airworthiness Directive (AD) 2017–07–07, Amendment 39–18845 (82 FR 18547, April 20, 2017), and adding the following new AD:

Airbus: Docket No. FAA–2018–0111; Product Identifier 2017–NM–059–AD.

(a) Comments Due Date

We must receive comments by April 6, 2018.

(b) Affected ADs

This AD replaces AD 2017–07–07, Amendment 39–18845 (82 FR 18547, April 20, 2017) (''AD 2017–07–07'').

(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 on which Airbus Modification 44360 has been embodied in production.

(1) Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(2) Airbus Model A340–212, –213, –312, and –313 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a report of cracking at fastener holes located at frame (FR) 40 on the lower shell panel junction. We are issuing this AD to detect and correct cracking at FR40 on the lower shell panel junction; such cracking could lead to reduced structural integrity of the fuselage.

(f) Compliance

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

(g) Compliance Times for the Actions Required by Paragraph (h) of This AD

Accomplish the actions required by paragraph (h) of this AD at the times specified in paragraphs (g)(1) and (g)(2) of this AD, as applicable.

(1) For airplanes having serial numbers 0176 through 0915 inclusive: Within the compliance times defined in table 1 to paragraph (g)(1) of this AD, and, thereafter, at intervals not to exceed the compliance times defined in Airbus Service Bulletin A330–53–3215, Revision 02, dated November 23, 2016 (''A330–53–3215, R2''); or Airbus Service Bulletin A340–53–4215, Revision 02, dated November 23, 2016 (''A340–53–4215, R2''); as applicable, depending on airplane utilization and configuration. As of the effective date of this AD, where paragraph 1.E. ''Compliance,'' of A330–53–3215, R2 specifies weight variant (WV) 050 in the condition column of table 1, configuration 003, for the purposes of this AD, WV060 and WV080 are also included.

Table 1 to Paragraph (g)(1) of this AD – *Compliance Time for Initial Inspection*

	Compliance time (whichever occurs later, A or B)
A	Before exceeding the compliance time "threshold" defined in table 1 of A330-53-3215, R2; or A340-53-4215, R2; as applicable, depending on airplane utilization and configuration and to be counted from airplane first flight.
B	For Model A330 airplanes: Within 2,400 flight cycles or 24 months, whichever occurs first after May 25, 2017 (the effective date of AD 2017-07-07). For Model A340 airplanes: Within 1,300 flight cycles or 24 months, whichever occurs first after May 25, 2017 (the effective date of AD 2017-07-07).

(2) For all airplanes except those identified in paragraph (g)(1) of this AD: Before exceeding the applicable compliance time ''threshold'' defined in paragraph 1.E., ''Compliance,'' of A330–53–3215, R2; or A340–53–4215, R2; as applicable, depending on airplane utilization and configuration and to be counted from airplane first flight, and, thereafter, at intervals not to exceed the compliance times specified in paragraph 1.E., ''Compliance'' of A330–53–3215, R2; or A340–53–4215, R2; as applicable, depending on airplane utilization and configuration. Where paragraph 1.E. ''Compliance,'' of A330–53–3215, R2 specifies weight variant WV050 in the condition column of table 1, configuration 003, for the purposes of this AD, WV060 and WV080 are also included.

(h) Repetitive Inspections and Related Investigative and Corrective Actions

At the applicable compliance times specified in paragraph (g) of this AD: Accomplish a special detailed inspection of the 10 fastener holes located at FR40 lower shell panel junction on both left-hand and right-hand sides, in accordance with the Accomplishment Instructions of A330–53–3215, R2; or A340–53–4215, R2; as applicable.

(1) If, during any inspection required by the introductory text of paragraph (h) of this AD, any crack is detected, before further flight, accomplish all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of A330–53–3215, R2; or A340–53–4215, R2; as applicable, except where A330–53–3215, R2; or A340–53–4215, R2; specifies to contact Airbus for repair instructions, and specifies that action as ''RC,'' this AD requires repair before further flight using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or 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.

(2) If, during any inspection required by the introductory text of paragraph (h) of this AD, the diameter of a fastener hole is found to be outside the tolerances of the transition fit as specified in A330–53–3215, R2; or A340–53–4215, R2; as applicable; and A330–53–3215, R2; or A340–53–4215, R2; specifies to contact Airbus for repair instructions, and specifies that action as ''RC,'' before further flight, repair using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Accomplishment of corrective actions, as required by paragraph (h)(1) of this AD, does not constitute terminating action for the repetitive inspections required by the introductory text of paragraph (h) of this AD.

(4) Accomplishment of a repair on an airplane, as required by paragraph (h)(2) of this AD, does not constitute terminating action for the repetitive inspections required by the introductory text of paragraph (h) of this AD for that airplane, unless the method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus's EASA DOA indicates otherwise.

(i) No Reporting Requirement

Although A330–53–3215, R2 and A340–53–4215, R2, specify to submit certain information to the manufacturer, and specify that action as ''RC,'' this AD does not include that requirement.

(j) Credit for Previous Actions

This paragraph provides credit for the inspections required by the introductory text of (h) of this AD and the related investigative and corrective actions required by paragraph (h)(1) of this AD, if those actions were performed before May 25, 2017 (the effective date of AD 2017–07–07), using Airbus Service Bulletin A330–53–3215, dated June 21, 2013; or Revision 01, dated April 17, 2014; or Airbus Service Bulletin A340–53–4215, dated June 21, 2013; or Revision 01, dated April 17, 2014; as applicable.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* 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 Section, Transport Standards Branch, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraphs (g)(1), (g)(2), (h)(1), (h)(2), and (i) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0063, dated April 12, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0111.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149.

(3) 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 Standards Branch, 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 February 9, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–03212 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Chapter I

Regulatory Review Schedule

AGENCY: Federal Trade Commission.

ACTION: Intent to request public comments.

SUMMARY: As part of its ongoing, systematic review of all Federal Trade Commission rules and guides, the Commission announces a modified ten-year regulatory review schedule. No Commission determination on the need for, or the substance of, the rules and guides listed below should be inferred from this notice.

DATES: February 20, 2018.

FOR FURTHER INFORMATION CONTACT: Further details about particular rules or guides may be obtained from the contact person listed below for the rule or guide.

SUPPLEMENTARY INFORMATION: To ensure that its rules and industry guides remain relevant and are not unduly burdensome, the Commission reviews them on a ten-year schedule. Each year the Commission publishes its review schedule, with adjustments made in response to public input, changes in the marketplace, and resource demands.

When the Commission reviews a rule or guide, it publishes a document in the

Federal Register seeking public comment on the continuing need for the rule or guide, as well as the rule's or guide's costs and benefits to consumers and businesses. Based on this feedback, the Commission may modify or repeal the rule or guide to address public concerns or changed conditions, or to reduce undue regulatory burden.

The Commission posts information about its review schedule on its website [1] to facilitate comment. This website contains an updated review schedule, a list of rules and guides previously eliminated in the regulatory review process, and the Commission's regulatory review plan.

Modified Ten-Year Schedule for Review of FTC Rules and Guides

For 2018, the Commission intends to initiate reviews of, and solicit public comments on, the following rules and guides:

(1) *Guides for the Nursery Industry, 16 CFR part 18.* Agency Contact: Megan Gray, (202) 326–3408, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 600 Pennsylvania Ave. NW, Washington, DC 20580.

(2) *Test Procedures and Labeling Standards for Recycled Oil, 16 CFR part 311.* Agency Contact: Hampton Newsome, (202) 326–2889, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 600 Pennsylvania Ave. NW, Washington, DC 20580.

(3) *Disclosure Requirements and Prohibitions Concerning Franchising, 16 CFR part 436.* Agency Contact: Craig Tregillus, (202) 326–2970, Federal Trade Commission, Bureau of Consumer Protection, Division of Marketing Practices, 600 Pennsylvania Ave. NW, Washington, DC 20580.

(4) *Identity Theft [Red Flag] Rules, 16 CFR part 681.* Agency Contact: Tiffany George, (202) 326–3040, Federal Trade Commission, Bureau of Consumer Protection, Division of Privacy and Identity Protection, 600 Pennsylvania Ave. NW, Washington, DC 20580.

The Commission is currently reviewing 11 of the 65 rules and guides within its jurisdiction. During 2017, it completed a review of 16 CFR 259, Guide Concerning Fuel Economy Advertising for New Automobiles; and 16 CFR 682, Disposal of Consumer Report Information and Records. A copy of the Commission's modified regulatory review schedule, indicating initiation dates for reviews through 2028, is appended. The Commission, in its discretion, may modify or reorder the schedule in the future to incorporate new rules, or to respond to external factors (such as changes in the law) or other considerations.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

Appendix

Regulatory Review

MODIFIED TEN-YEAR SCHEDULE

16 CFR part	Topic	Year to initiate review
23	Guides for the Jewelry, Precious Metals, and Pewter Industries	Currently Under Review.
308	Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 [Pay Per Call Rule].	Currently Under Review.
310	Telemarketing Sales Rule	Currently Under Review.
314	Standards for Safeguarding Customer Information	Currently Under Review.
315	Contact Lens Rule	Currently Under Review.
316	CAN–SPAM Rule	Currently Under Review.
410	Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets.	Currently Under Review.
423	Care Labeling of Textile Wearing Apparel and Certain Piece Goods	Currently Under Review.
433	Preservation of Consumers' Claims and Defenses [Holder in Due Course Rule]	Currently Under Review.
456	Ophthalmic Practice Rules (Eyeglass Rule)	Currently Under Review.
460	Labeling and Advertising of Home Insulation	Currently Under Review.
18	Guides for the Nursery Industry	2018.
311	Test Procedures and Labeling Standards for Recycled Oil	2018.
436	Disclosure Requirements and Prohibitions Concerning Franchising	2018.
681	Identity Theft [Red Flag] Rules	2018.
24	Guides for Select Leather and Imitation Leather Products	2019.
453	Funeral Industry Practices	2019.
14	Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements.	2020.
255	Guides Concerning Use of Endorsements and Testimonials in Advertising	2020.
313	Privacy of Consumer Financial Information	2020.
317	Prohibition of Energy Market Manipulation Rule	2020.
318	Health Breach Notification Rule	2020.
432	Power Output Claims for Amplifiers Utilized in Home Entertainment Products	2020.
444	Credit Practices	2020.
640	Duties of Creditors Regarding Risk-Based Pricing	2020.
641	Duties of Users of Consumer Reports Regarding Address Discrepancies	2020.
642	Prescreen Opt-Out Notice	2020.
660	Duties of Furnishers of Information to Consumer Reporting Agencies	2020.
680	Affiliate Marketing	2020.
698	Model Forms and Disclosures	2020.
801	[Hart-Scott-Rodino Antitrust Improvements Act] Coverage Rules	2020.
802	[Hart-Scott-Rodino Antitrust Improvements Act] Exemption Rules	2020.
803	[Hart-Scott-Rodino Antitrust Improvements Act] Transmittal Rules	2020.
437	Business Opportunity Rule	2021.
233	Guides Against Deceptive Pricing	2022.
238	Guides Against Bait Advertising	2022.

[1] *http://www.ftc.gov/enforcement/rules/regulatory-review.*

MODIFIED TEN-YEAR SCHEDULE—Continued

16 CFR part	Topic	Year to initiate review
251	Guide Concerning Use of the Word ''Free'' and Similar Representations	2022.
260	Guides for the Use of Environmental Marketing Claims	2022.
312	Children's Online Privacy Protection Rule	2022.
254	Guides for Private Vocational and Distance Education Schools	2023.
309	Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles	2023.
429	Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations.	2023.
20	Guides for the Rebuilt, Reconditioned, and Other Used Automobile Parts Industry	2024.
240	Guides for Advertising Allowances and Other Merchandising Payments and Services [Fred Meyer Guides].	2024.
300	Rules and Regulations under the Wool Products Labeling Act of 1939	2024.
301	Rules and Regulations under Fur Products Labeling Act	2024.
303	Rules and Regulations under the Textile Fiber Products Identification Act	2024.
425	Use of Prenotification Negative Option Plans	2024.
435	Mail, Internet, or Telephone Order Merchandise	2024.
424	Retail Food Store Advertising and Marketing Practices [Unavailability Rule]	2024.
239	Guides for the Advertising of Warranties and Guarantees	2025.
306	Automotive Fuel Ratings, Certification and Posting	2025.
305	Energy Labeling Rule	2025.
500	Regulations under Section 4 of the Fair Packaging and Labeling Act	2025.
501	Exemptions from Requirements and Prohibitions under Part 500	2025.
502	Regulations under Section 5(c) of the Fair Packaging and Labeling Act	2025.
503	Statements of General Policy or Interpretation [under the Fair Packaging and Labeling Act].	2025.
700	Interpretations of Magnuson-Moss Warranty Act	2025.
701	Disclosure of Written Consumer Product Warranty Terms and Conditions	2025.
702	Pre-Sale Availability of Written Warranty Terms	2025.
703	Informal Dispute Settlement Procedures	2025.
304	Rules and Regulations under the Hobby Protection Act	2026.
455	Used Motor Vehicle Trade Regulation Rule	2026.
259	Guide Concerning Fuel Economy Advertising for New Automobiles	2027.
682	Disposal of Consumer Report Information and Records	2027.

[FR Doc. 2018–03395 Filed 2–16–18; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 358

[Docket No. RM18–10–000]

Petition for Rulemaking of Airlines for America and the National Propane Gas Association; Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Petition for rulemaking.

SUMMARY: Take notice that on February 1, 2018, pursuant to the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, Airlines for America and the National Propane Gas Association submit this Petition for Rulemaking (Petition), and respectfully request that the Commission issue a Notice of Proposed Rulemaking expanding its affiliate Standards of Conduct for Transmission Providers regulations to the crude oil, natural gas liquid, and petroleum product pipeline industry, as more fully explained in the petition.

DATES: Comments due 5:00 p.m. Eastern time on March 14, 2018.

ADDRESSES: The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Derek L. Anderson, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6266, *Derek.Anderson@ferc.gov*.

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.

SUPPLEMENTARY INFORMATION: Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s).

Dated: February 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–03249 Filed 2–16–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. FDA–2018–N–0128]

Nicotine Steering Committee; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is establishing a public docket to receive suggestions, recommendations, and comments on topics or policy issues for consideration by FDA's Nicotine Steering Committee (NSC). FDA would like to receive feedback from interested parties, including academic institutions, regulated industries, patient representatives, and other interested organizations. These comments will help the Agency identify and address priorities related to the use of therapeutic nicotine for combustible tobacco product cessation.

DATES: Submit either electronic or written comments by April 16, 2018.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–0128 for ''Recommendations and Comments for the Food and Drug Administration Nicotine Steering Committee.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Allison Hoffman, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 1314, Silver Spring, MD 20993, 301–796–9203, *OMPTFeedback@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The NSC was established in November 2017 to help develop and implement nicotine policy and regulation. The primary focus of the NSC is on the use of therapeutic nicotine for combustible tobacco product cessation. The NSC is comprised of senior leaders from the Center for Drug Evaluation and Research, the Center for Tobacco Products, and the Office of the Commissioner. The NSC will ensure alignment of FDA's Centers and facilitate consensus and development of unified FDA positions on cross-cutting issues related to nicotine policy and regulation. Additional staff from the Centers and other FDA offices provide expertise as needed for specific policy topics under consideration. While there are various other mechanisms available to raise issues for Agency consideration, by establishing this public docket FDA seeks to provide a mechanism for the public to recommend specific topics for direct, collective engagement and consideration by the NSC. The Agency believes that this process will also further enhance transparency in FDA's approach to policy development and implementation.

II. Establishment of a Public Docket and Request for Comments

The docket is being established to solicit suggestions, recommendations, and comments relating to the use of therapeutic nicotine for combustible tobacco product cessation that may warrant consideration by the NSC (see Staff Manual Guide 2010.20, FDA Nicotine Steering Committee [1]). Topic suggestion submissions should describe the following: (1) The nicotine policy issue recommended for discussion (*e.g.,* clarifying previous advice or precedents on a specified therapeutic nicotine product policy topic, reconciling seemingly differing perspectives within

[1] *https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/StaffManualGuides/UCM594385.pdf.*

FDA or between FDA and regulated industry on a specified therapeutic nicotine product policy topic); (2) the rationale for doing so, including why direct engagement by the NSC would be appropriate/helpful; (3) recommendations on how the nicotine policy issue could be addressed; and (4) existing policy documents (*e.g.,* final guidance) relevant to the nicotine product policy issue. Note that policy issues concerning any draft guidance or proposed rule should be submitted to the docket for that draft guidance or rulemaking.

The Agency will carefully consider all comments submitted. FDA generally will not respond directly to the person or organization submitting the comment. In general, policy decisions reached by the NSC are communicated and implemented in accordance with FDA's good guidance practices regulation (21 CFR 10.115) or notice and comment procedures.

Dated: February 13, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–03341 Filed 2–16–18; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0637; FRL–9974–62—Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Emissions Statement Requirement for the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Maryland. This revision fulfills Maryland's emissions statement requirement for the 2008 ozone national ambient air quality standard (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 22, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2017–0637 at *http://www.regulations.gov,* or via email to *spielberger.susan@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Gavin Huang, (215) 814–2042, or by email at *huang.gavin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 27, 2008, EPA strengthened the ozone standard from 0.08 to 0.075 parts per million (ppm). 73 FR 16436. On May 21, 2012, EPA designated areas as nonattainment for the 2008 ozone NAAQS, including the Baltimore and Washington, DC-MD-VA areas, which include the following counties in Maryland: Anne Arundel, Baltimore, Baltimore City, Carroll, Harford, Howard, Cecil, Calvert, Charles, Frederick, Montgomery, and Prince George's Counties. *See* 40 CFR 81.321.

Additionally, Maryland is located in the ozone transport region (OTR) established by Congress in section 184 of the CAA. Pursuant to section 184(b)(2), any stationary source that emits or has the potential to emit at least 50 tons per year (tpy) of volatile organic compounds (VOC) shall be considered a major stationary source and subject to the requirements which would be applicable to major stationary sources if the area were classified as a moderate nonattainment area. *See* CAA section 184. Thus, states within the OTR are subject to plan (or SIP) requirements in CAA section 182(b) applicable to moderate nonattainment areas. Also, section 182(f)(1) of the CAA requires that the plan provisions required for major stationary sources of VOC also apply to major stationary sources of oxides of nitrogen (NO_X) for states with moderate (or worse) ozone nonattainment areas. A major stationary source of NO_X is defined as stationary facility or source of air pollutants which directly emits, or has the potential to emit 100 tpy or more of NO_X. *See* CAA section 302(j).

Section 182 of the CAA identifies additional plan submissions and requirements for ozone nonattainment areas. Specifically, section 182(a)(3)(B) of the CAA requires that states develop and submit rules which establish annual reporting requirements for certain stationary sources. Sources that are within marginal (or worse) ozone nonattainment areas must annually report the actual emissions of NO_X and VOC to the state. However, states may waive sources that emit under 25 tpy of NO_X and VOC if the state provides an inventory of emissions from such class or category of sources. *See* CAA section 182(a)(3)(B)(ii).

In summary, because Maryland is located in the OTR, sources that are located in ozone attainment areas and emit above 50 tpy of VOC or 100 tpy of NO_X are considered major sources and subject to the requirements of major stationary sources in moderate (or worse) nonattainment area, such as an emissions statement submission as required by CAA section 182(a)(3)(B). *See* CAA sections 182(f) and 184(b)(2). Sources that are located in designated marginal (or worse) nonattainment areas must submit an emissions statement as required by CAA section 182(a)(3)(B). As stated previously, states may waive sources under that emit 25 tpy of NO_X and 25 tpy of VOC threshold if the state provides an inventory of emissions from such class or category of sources as required by CAA sections 172 and 182.[1] *See* section 182(a)(3)(B)(ii).

On September 25, 2017, the State of Maryland, through the Maryland Department of the Environment (MDE), submitted a SIP revision to satisfy the emissions statement requirement of section 182(a)(3)(B) of the CAA for the 2008 ozone NAAQS.

II. Summary of SIP Revision and EPA Analysis

On October 12, 1994 (59 FR 51517), EPA approved Maryland's SIP submittal that satisfies CAA section 182(a)(3)(B). Maryland's emissions reporting requirements are codified in Maryland regulation COMAR 26.11.01.05–1

[1] For further information on the emissions statement reporting requirements, *see* ''Guidance on the Implementation of an Emission Statement Program (July 1992)'' *https://www.epa.gov/sites/production/files/2015–09/documents/emission_statement_program_zypdf.pdf,* pp. 5–9.

''Emissions Statements.'' COMAR 26.11.01.05–1 requires installations or sources that emit above a particular threshold of NO_X or VOC and are within certain geographic areas to submit an emissions statement to the State. The statement must be submitted by a certified individual who can verify the source's actual emissions.

COMAR 26.11.01.05–1 requires that sources that emit 25 tons or more of NO_X or VOC during a calendar year in the following counties (which include nonattainment areas for the 2008 ozone NAAQS) submit an emissions statement: Anne Arundel, Baltimore, Baltimore City, Calvert, Carroll, Cecil, Charles, Frederick, Harford, Howard, Kent, Montgomery, Prince George's, and Queen Anne's counties. As previously mentioned, per CAA section 182(a)(3)(B)(ii), states may waive sources under 25 tpy of NO_X and VOC if the state provides an inventory of emissions from such class or category of sources as required by CAA sections 172 and 182. Maryland does provide emissions inventories for nonattainment areas as required by CAA section 172(c)(3). *See e.g.* 82 FR 44544 (September 25, 2017).

Finally, COMAR 26.11.01.05–1 also requires that sources that emit 50 tons or more of VOC or 100 tons or more of NO_X during a calendar year in the following counties (which are in ozone attainment for the 2008 ozone NAAQS but still located within the OTR) submit an emissions statement: Allegany, Caroline, Dorchester, Garrett, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester counties. Because Maryland is located in the OTR, sources that are located in attainment areas for the 2008 ozone NAAQS and emit above 50 tpy of VOC and 100 tpy of NO_X are considered major sources and subject to the requirements of major stationary sources in moderate (or worse) nonattainment area, such as an emissions statement submission as required by CAA section 182(a)(3)(B). *See* CAA sections 182(f) and 184(b)(2).

In Maryland's September 25, 2017 SIP submittal, Maryland states that the existing COMAR 26.11.01.05–1 ''Emissions Statements'' continues to satisfy section 182(a)(3)(B) for the 2008 ozone NAAQS because Maryland has not made any changes since EPA's prior approval and COMAR 26.11.01.05–1 meets the CAA requirements for emission statements. *See* 59 FR 51517 (October 12, 1994). EPA finds that COMAR 26.11.01.05–1 continues to satisfy section 182(a)(3)(B) because the existing rule is applicable to the entire State of Maryland and requires stationary sources that emit NO_X or VOC to submit an emissions statement to the State detailing the sources' emissions. EPA finds Maryland's emissions' thresholds for sources that are required to submit an emissions statement meet CAA requirements in sections 182 (plan submissions and requirements for ozone nonattainment areas) and 184 (OTR requirements). *See also* ''Guidance on the Implementation of an Emission Statement Program (July 1992).'' Therefore, EPA has determined that COMAR 26.11.01.05–1, which is currently in the Maryland SIP, is appropriate to address the emissions statement requirement in section 182(a)(3)(B) and is proposing to approve this SIP revision. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

III. Proposed Action

EPA is proposing to approve the September 25, 2017 Maryland SIP revision certifying that Maryland's existing SIP-approved emissions statement regulation meets the emissions statement requirement of section 182(a)(3)(B) of the CAA for the 2008 ozone NAAQS.

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 CAA 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 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 proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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, this proposed rule, which proposes to approve Maryland's certification that Maryland's SIP-approved emissions statement regulation meets the emissions statement requirement of section 182(a)(3)(B) of the CAA, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: February 9, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2018–03416 Filed 2–16–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[EPA–HQ–OW–2018–0063; FRL–9973–41–OW]

Clean Water Act Coverage of "Discharges of Pollutants" via a Direct Hydrologic Connection to Surface Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is requesting comment on the Agency's previous statements regarding the Clean Water Act (CWA) and whether pollutant discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to the jurisdictional surface water may be subject to CWA regulation. EPA is requesting comment on whether the Agency should consider clarification or revision of those statements and if so, comment on how clarification or revision should be provided.

DATES: Comments must be received on or before May 21, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2018–0063, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Scott Wilson, Office of Wastewater Management, Water Permits Division (MC4203M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–6087; email address: *wilson.js@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information
A. Does this action apply to me?
B. What should I consider as I prepare my comments for EPA?
II. Background
A. The Clean Water Act's National Pollutant Discharge Elimination System Program
B. EPA's Previous Statements Regarding the Clean Water Act's "Discharge of a Pollutant" Provision Where There Is a Direct Hydrologic Connection
C. Direct Hydrologic Connection
III. Request for Comment

I. General Information

A. Does this action apply to me?

Tribes, states, local governments, the regulated community, and citizens interested in federal jurisdiction over activities that may release pollutants to groundwater may wish to provide input. Entities releasing pollutants to groundwater or other subsurface flow that has a direct hydrologic connection to jurisdictional surface waters may be affected by whether and how EPA clarifies when or if direct hydrologically connected releases are subject to regulation under the CWA. Potentially affected entities include:

Category	Examples of potentially affected entities
States, Tribes, and Territories	State, Tribal, and Territorial water quality agencies and NPDES permitting authorities that may need to determine whether sources of pollutants should be addressed by standards or permitting actions.
Federal Agencies	Federal agencies with projects or other activities near surface waters.
Industry	Industries that may have releases that affect groundwater with connections to surface waters.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by a potential clarification of EPA's previous statements in response to comments received on this notice. Other types of entities not listed in the table could also be affected. If you have questions regarding the effect of this action on a particular entity, please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

A. The Clean Water Act's National Pollutant Discharge Elimination System Program

The CWA—initially enacted as the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500) and subsequent amendments—establishes the basic structure in place today for regulating discharges of pollutants to the waters of the United States. In the CWA, Congress established the national objective to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' CWA Section 1251(a). Congress also expressly intended that states retain their traditional role in preventing, reducing and eliminating pollution: ''It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources . . . .'' CWA Section 1251(b).

The CWA National Pollutant Discharge Elimination System (NPDES) permitting authority, whether implemented by EPA or an authorized State, is limited to regulating the discharge of pollutants from point sources to navigable waters. Congress prohibited any ''discharge of any pollutant'' to ''navigable waters'' unless it is authorized by statute, generally by a permit. CWA Sections 1311, 1342, 1344, 1362. The CWA defines ''discharge of a pollutant'' as ''any addition of any pollutant to navigable waters from any point source.'' CWA Section 1362(12)(A). Pollutant means ''dredged spoil, solid waste, incinerator, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.'' CWA Section 1362(6). The CWA defines ''navigable waters'' as ''the waters of the United States, including the territorial seas''; and a ''point source'' as ''any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.'' CWA Sections 1362(7), (14).

The CWA authorizes EPA to issue NPDES permits under Section 402(a), but EPA may authorize a state to administer its own NPDES program if EPA determines that the program meets the statutory criteria. CWA Sections 1342(a), (b). When a state receives such authorization, EPA retains oversight and enforcement authorities. CWA Sections 1319, 1342(d).

B. EPA's Previous Statements Regarding the Clean Water Act's ''Discharge of a Pollutant'' Provision Where There Is a Direct Hydrologic Connection

EPA has previously stated that pollutants discharged from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to the jurisdictional water may be subject to CWA permitting requirements. EPA has not stated that CWA permits are required for pollutant discharges to groundwater in all cases, but rather that pollutants discharged from point sources to jurisdictional surface waters that occur via groundwater or other subsurface flow that has a direct hydrologic connection to the surface water may require such permits. The Agency has made these statements in previous rulemaking, permitting, and guidance documents, although most of these statements were collateral to the central focus of a rulemaking or adjudication. *See* Final NPDES Permit Application Regulations for Storm Water Discharges, 55 FR 47,990, 47,997 (Dec. 2, 1990) (''[T]his rulemaking only addresses discharges to water of the United States, consequently discharges to ground waters are not covered by this rulemaking (unless there is a hydrological connection between the ground water and a nearby surface water body).''); 1991 Final Rule Addressing Water Quality Standards on Indian Lands, 56 FR 64,876, 64,892 (Dec 12, 1991) (''Notwithstanding the strong language in the legislative history of the Clean Water Act to the effect that the Act does not grant EPA authority to regulate pollution of groundwaters, EPA and most courts addressing the issues have recognized that . . . the Act requires NPDES permits for discharges to groundwater where there is a direct hydrological connection between groundwaters and surface waters. In these situations, the affected groundwaters are not considered 'waters of the United States' but discharges to them are regulated because such discharges are effectively discharges to the directly connected surface waters.''); Final General NPDES Permit for Concentrated Animal Feeding Operations (CAFO) in Idaho ID–G–01–0000, 62 FR 20,178 (1997) (''the Clean Water Act does not give EPA the authority to regulate groundwater quality through NPDES permits. The only situation in which groundwater may be affected by the NPDES program is when a discharge of pollutants to surface waters can be proven to be via groundwater. . . . [T]he permit requirements . . . are intended to protect surface waters which are contaminated via a groundwater (subsurface) connection.''). *See also* Proposed NPDES Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs), 66 FR 2,960, 3,017 (Jan. 12, 2001) (''As a legal and factual matter, EPA has made a determination that, in general, collected or channeled pollutants conveyed to surface waters via ground water can constitute a discharge subject to the Clean Water Act. The determination of whether a particular discharge to surface waters via ground water which has a direct hydrologic connection is a discharge which is prohibited without an NPDES permit is a factual inquiry . . . .'').

When taking final action on the proposed regulation of discharges from CAFOs, EPA rejected establishing nationally applicable effluent limitation requirements related to releases to groundwater with a direct hydrologic connection to jurisdictional water and recognized that ''there are scientific uncertainties and site-specific considerations with respect to regulating discharges to surface water via groundwater with a direct hydrologic connection to surface water [and] conflicting legal precedents on this issue.'' Final NPDES Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations, 68 FR 7,175, 7,216 (Feb. 12, 2003). EPA stated in the preamble to the final rule, in the context of ensuring proper closure of CAFOs, that the permitting authority may impose special permit terms and conditions addressing such circumstances on a case-by-case basis as appropriate. 68 FR at 7,229. The Agency further noted that ''[n]othing in this rule shall be construed to expand, diminish, or otherwise affect the jurisdiction of the Clean Water Act over discharges to surface water via groundwater that has a direct hydrologic connection to surface water.'' *Id.* at 7,216–17.

In CWA citizen suits against regulated entities, courts have faced the question of whether regulation under the CWA of point source discharges of pollutants includes regulation of releases to groundwater with a direct hydrologic connection to jurisdictional surface

waters. Some courts have determined that the statute does not explicitly answer this question, while others have held that the statute does not extend to releases to groundwater. Other courts have interpreted the CWA as covering not only discharges of pollutants to navigable waters, but also releases of pollutants that travel from a point source to navigable waters over the surface of the ground. *E.g., Sierra Club* v. *Abston Constr. Co.,* 620 F.2d 41, 44–45 (5th Cir. 1980). As one court noted, ''the inclusion of groundwater with a hydrological connection to surface waters has troubled courts and generated a torrent of conflicting commentary.'' *Potter* v. *ASARCO,* Civ. No. S:56–cv–555, slip op. at 19 (D. Neb. Mar. 3, 1998).

Certain courts have concluded that a hydrological connection between groundwater and surface waters is insufficient to justify CWA regulation. In *Village of Oconomowoc Lake* v. *Dayton Hudson Corporation,* the Seventh Circuit concluded that ''[n]either the Clean Water Act nor the EPA's definition [of waters of the United States] asserts authority over ground waters, just because these may be hydrologically connected with surface waters.'' 24 F.3d 962, 965 (7th Cir. 1994), *cert. denied,* 513 U.S. 930 (1994). The court cited EPA's statement in the preamble to the 1990 Final NPDES Permit Application Regulations for Storm Water Discharges noting the potential for a hydrologic connection between groundwater and jurisdictional surface water, but concluded that the reference was ''collateral'' and ''not a satisfactory substitute for focused attention in rulemaking or adjudication.'' *Id.* at 966. In *Rice* v. *Harken Exploration Co.,* the Fifth Circuit held that ''a generalized assertion that covered surface waters will eventually be affected by remote, gradual, natural seepage from the contaminated groundwater'' was outside the scope of the Oil Pollution Act in order ''to respect Congress's decision to leave the regulation of groundwater to the States.'' 250 F.3d 264, 272 (5th Cir. 2001). In *Cape Fear River Watch* v. *Duke Energy Progress,* the district court held that ''Congress did not intend for the CWA to extend federal regulatory authority over groundwater, regardless of whether that groundwater is eventually or somehow 'hydrologically connected' to navigable surface waters.'' 25 F. Supp. 3d 798, 810 (E.D.N.C. 2014).

A number of other district courts have taken the view that Congress intended to regulate the release of pollutants that reach waters of the United States, whether the pollutants reach the surface water directly, or through groundwater with a direct hydrologic connection. *E.g., Idaho Rural Council* v. *Bosma,* 143 F. Supp. 2d 1169, 1179–80 (D. Idaho 2001). Because these courts interpreted the term ''discharge of a pollutant'' to cover discharges that reach jurisdictional water over the ground and through other means, they concluded that exempting discharges through groundwater could lead to confusion and unintended results. One court noted that ''it would hardly make sense for the CWA to encompass a polluter who discharges pollutants via a pipe running from the factory directly to the riverbank, but not a polluter who dumps the same pollutants into a man-made settling basin some distance short of the river and then allows the pollutants to seep into the river via the groundwater.'' *N. Cal. River Watch* v. *Mercer Fraser Co.,* No. 04–4620, 2005 WL 2122052, at *2 (N.D. Cal. Sept. 1, 2005). And the Ninth Circuit recently held that a point source discharge to groundwater of ''more than [a] de minimis'' amount of pollutants that is ''fairly traceable from the point source . . . such that the discharge is the functional equivalent of a discharge into a navigable water'' is regulated under the Act. *Haw. Wildlife Fund* v. *Cty. of Maui,* No. 15–17447, slip. op. at 19 (9th Cir. Feb. 1, 2018).

C. Direct Hydrologic Connection

In addition to the mixed case law on whether certain releases of pollutants to groundwater are within the jurisdictional reach of the CWA, ascertaining whether there is a direct hydrologic connection such that a particular release to groundwater could be considered a ''discharge of a pollutant'' to a ''water of the United States'' and therefore subject to the CWA has been characterized previously by EPA as a fact-specific determination. *See* 66 FR at 3,017. EPA has stated that relevant evidence includes the time it takes for a pollutant to move to surface waters, the distance it travels, and its traceability to the point source. *Id.* These factors are affected by other site specific factors, such as geology, flow, and slope. *Id.*

III. Request for Comment

EPA is requesting comment from tribes, states, members of the public, and other interested stakeholders regarding whether EPA should review and potentially revise its previous statements concerning the applicability of the CWA NPDES permit program to pollutant discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to a jurisdictional surface water. Specifically, EPA seeks comment on whether subjecting such releases to CWA permitting is consistent with the text, structure, and purposes of the CWA. If EPA has the authority to permit such releases, EPA seeks comment on whether those releases would be better addressed through other federal authorities as opposed to the NPDES permit program. Furthermore, EPA seeks comment on whether some or all such releases are addressed adequately through existing state statutory or regulatory programs or through other existing federal regulations and permit programs, such as, for example, state programs that implement EPA's underground injection control regulations promulgated pursuant to the Safe Drinking Water Act.

EPA also seeks comment on whether EPA should clarify its previous statements concerning pollutant discharges to groundwater with a direct hydrologic connection to jurisdictional water in order to provide additional certainty for the public and the regulated community. Such a clarification could address the applicability of the CWA to groundwater with a direct hydrologic connection to jurisdictional water, or could define what activities would be regulated if not a discharge to a jurisdictional surface water (*i.e.,* placement on the land), or which connections are considered ''direct'' in order to reduce regulatory uncertainties associated with that term. EPA also seeks suggestions on what issues should be considered if further clarification is undertaken, including, for example, the consequences of asserting CWA jurisdiction over certain releases to groundwater or determining that no such jurisdiction exists. Finally, EPA seeks comment on what format or process EPA should use to revise or clarify its previous statements (*e.g.,* through memoranda, guidance, or in the form of rulemaking) if the Agency pursues further action in response to this request for comment.

Dated: February 12, 2018.

David P. Ross,

Assistant Administrator, Office of Water.

[FR Doc. 2018–03407 Filed 2–16–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2017–0613; FRL–9974–49–OLEM]

Oklahoma: Approval of Coal Combustion Residuals State Permit Program; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is extending the comment period on EPA's proposal to approve Oklahoma's Coal Combustion Residuals (CCR) State Permit Program. The notice announcing this proposed approval was published on January 16, 2018, and the public comment period was scheduled to end on March 2, 2018. However, a number of public interest groups have requested additional time to review Oklahoma's application for a CCR State Permit Program and to develop and submit comments. Therefore, in response to the request for additional time, EPA is extending the comment period, so that comments are now due on or before March 19, 2018.

DATES: Comments on the notice of availability published January 16, 2018 (83 FR 2100) must be received on or before March 19, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2017–0613; Title: Oklahoma: Approval of Coal Combustion Residuals State Permit Program at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Mary Jackson, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, Mail code 5304P, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (703) 308–8453; email address: *jackson.mary@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is proposing to approve Oklahoma's CCR state permit program application, pursuant to RCRA 4005(d)(1)(B). If approved, the Oklahoma Department of Environmental Quality (ODEQ)'s permit program would operate ''in lieu of'' the federal CCR program, codified at 40 CFR part 257, subpart D.

On July 31, 2017 Oklahoma submitted to EPA its initial application. The State supplemented its original application on October 18, 2017. EPA determined that the application was complete and notified Oklahoma of its determination by letter dated December 21, 2017.

The statute requires EPA to evaluate two components of a state program to determine whether it meets the standard for approval. First, EPA is to evaluate the adequacy of the permit program (or other system of prior approval and conditions) itself. See 42 U.S.C. 6945(d)(1)(A). Second, EPA is to evaluate the adequacy of the technical criteria that will be included in each permit, to determine whether they are the same as the federal criteria, or to the extent they differ, whether the modified criteria are ''at least as protective as'' the federal requirements. See 42 U.S.C. 6945(d)(1)(B). Only if both components meet the statutory requirements may EPA approve the program. See 42 U.S.C. 6945(d)(1).

On that basis, EPA conducted an analysis of ODEQ's application, including a thorough analysis of OAC 252:517 and its adoption of 40 CFR part 257, subpart D. Based on this analysis, EPA has preliminarily determined that ODEQ's submitted CCR permit program meets the standard for approval in section 4005(d)(1)(A) and (B). EPA is therefore proposing to approve Oklahoma's application. Oklahoma's program contains all the elements of the federal rule, including requirements for location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post-closure care, recordkeeping, notification and internet posting requirements. It also contains state-specific language, references and state-specific requirements that differ from the federal rule, which EPA has preliminarily determined to be at least as protective as the federal criteria. EPA's analysis and preliminary findings are available in the docket supporting this proposed action.

The notice announcing the proposed approval of Oklahoma's application was published on January 16, 2018, and the comment period was scheduled to end on March 2, 2018. See 83 FR 2100. Since publication of the notice, a number of stakeholders have requested additional time to review Oklahoma's application and to develop and submit comments. Therefore, after considering this request for additional time, EPA has decided to extend the comment period until March 19, 2018.

Dated: February 8, 2018.

Barry N. Breen,

Principal Deputy Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2018–03274 Filed 2–16–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 180110025–8025–01]

RIN 0648–BH51

Fisheries of the Northeastern United States; Northern Gulf of Maine Measures in Framework Adjustment 29 to the Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes some of the measures included in Framework Adjustment 29 to the Atlantic Sea Scallop Fishery Management Plan that establish scallop specifications and other measures for the Northern Gulf of Maine scallop management area for fishing years 2018 and 2019. This action is necessary to prevent overfishing and improve both yield-per-recruit and the overall management of the Atlantic sea scallop resource in the Northern Gulf of Maine. The intended effect of this rule is to notify the public of these proposed measures and to solicit comment on the potential scallop fishery management changes.

DATES: Comments must be received by March 7, 2018.

ADDRESSES: The New England Fishery Management Council has prepared a draft environmental assessment (EA) for this action that describes the proposed measures, other considered alternatives, and analyzes the impacts of the proposed measures and alternatives. The Council submitted a decision draft of the framework to NMFS that includes the draft EA, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and an Initial Regulatory Flexibility Analysis (IRFA). Copies of the decision draft of Framework Adjustment 29, the draft EA, and the IRFA, are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

You may submit comments on this document, identified by NOAA–NMFS–2018–0007, by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0007,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Northern Gulf of Maine Measures in Framework Adjustment 29.''

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 z ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978–281–9233.

SUPPLEMENTARY INFORMATION:

Background

The scallop fishery's management unit ranges from the shorelines of Maine through North Carolina to the outer boundary of the Exclusive Economic Zone. The Atlantic Sea Scallop Fishery Management Plan (FMP), established in 1982, includes a number of amendments and framework adjustments that have revised and refined the fishery's management. The New England Fishery Management Council sets scallop fishery catch limits and other management measures through specification or framework adjustments that occur annually or biennially. The Council adopted Framework Adjustment 29 (Framework 29) to the Atlantic Sea Scallop FMP in its entirety on December 7, 2017, and submitted a decision draft of the framework, including a draft EA, to NMFS on December 21, 2017, for review and approval. Framework 29 includes catch, effort, and quota allocations and adjustments to the rotational area management program for fishing year 2018 and default specifications for fishing year 2019.

This action proposes the portion of Framework 29 that establishes scallop specifications and other measures for the Northern Gulf of Maine (NGOM) scallop management area for fishing years 2018 and 2019. These measures were developed to address harvesting activities by the limited access fleet in the past two years. In fishing years 2016 and 2017, the limited access fleet harvested substantially more scallops from the NGOM than they had since the beginning of the NGOM management program. Because the limited access fleet accessed the NGOM through the days-at-sea (DAS) program, there was no hard limit on its landings from the area. This resulted in total landings from the NGOM by the limited access fleet that far exceeded the total allowable catch (TAC) for the limited access general category (LAGC) fleet. The Council felt that this was inconsistent with the goals of the NGOM management program. Accordingly, the Council developed Framework 29, in part, to put measures in place to temporarily divide the catch more equitably between the two fleets and limit the total catch by the limited access fleet from the NGOM to a level consistent with its specified TAC for the NGOM.

Prior to its approval of Framework 29 at its December meeting, the Council raised concerns regarding the complexity of Framework 29 and the timeline for implementation. Specifically, the Council was concerned that if the NGOM measures in Framework 29 are not in place by April 1, 2018, the limited access fleet could exceed its portion of the total allowable catch (TAC) proposed in the framework, potentially undermining the sustainability of the NGOM fishery in at least the short term. We informed the Council at the December meeting that we would consider separating out the NGOM measures in Framework 29 to ensure that they were in place prior to April 1, 2018. To help prevent excessive fishing in the NGOM, we are separating out the NGOM measures in Framework 29 to expedite their implementation. As a result, this action addresses only the portions of Framework 29 that affect fishing in the NGOM. We will address the remaining specifications and other management measure in Framework 29 in a follow-up action.

This action would set new management measures in the NGOM for the scallop fishery for the 2018 and 2019 fishing years, including prohibiting the limited access fleet from accessing the NGOM while participating in the DAS program. In addition, this action would divide the annual NGOM TAC between the limited access fleet while on a research set-aside (RSA) trip and LAGC fleets for the 2018 and 2019 (default) fishing years as follows:

TABLE 1—NGOM TAC FOR FISHING YEARS 2018 AND 2019

[Default]

Fleet	2018		2019 (default)	
	lb	kg	lb	kg
LAGC	135,000	61,235	102,500	46,493
Limited access	65,000	29,484	32,500	14,742
Total	200,000	90,718	135,000	61,235

Setting the NGOM TAC

The NGOM TAC would be set by applying a fishing mortality rate (F) of F = 0.18 using only the projected exploitable biomass on Jeffreys Ledge and Stellwagen Bank for fishing years 2018 and 2019. The Council chose to base the F rate only on these two areas because the Council projects that this is where the bulk of the fishing in the NGOM will take place. The 2017 survey of Stellwagen Bank did not see any signs of recruitment to the NGOM resource. Therefore, the Council chose to set a more conservative TAC for fishing years 2018 and 2019 that may lead to more consistent harvests in the NGOM. The overall TAC for the entire NGOM management area would be set at 200,000 lbs (90,718 kg) for fishing year 2018, and 135,000 lbs (61,235 kg) for fishing year 2019 (Table 1).

Dividing the NGOM TAC

If current measures remain in place for the NGOM, limited access scallop vessels will be able to fish in the NGOM while on DAS until the LAGC fleet reaches the TAC. Since this could result in extremely high catch and fishing mortality in the NGOM, this action would divide the TAC between the LAGC fleet and the limited access fleet while on a RSA trip at a level consistent with the biomass in the area. The NGOM TAC for the LAGC component was set at 70,000 lb (31,751 kg) from fishing year 2008 through fishing year 2016. Using this as a basis, the Council recommended that the first 70,000 lb (31,751 kg) of the NGOM TAC should be allocated to the LAGC fleet, and that any remaining pounds should be split equally between the LAGC and limited access fleets (Table 1). Each fleet would operate independently under its own portion of the TAC. The NGOM management area would remain open for each component until their TAC is projected to be harvested, even if the other component has reached its TAC. For example, if the LAGC component harvests its TAC before the limited access fleet harvests all of its allocation, the area would remain open for limited access fishing. The Council considered several options for temporarily dividing the TAC between the two fleets. This TAC division is intended to be a short-term solution to allow controlled fishing in the NGOM management area until the Council and NMFS can develop a future action to address NGOM issues more holistically.

Managing Limited Access Removals

This action would not change how the LAGC component currently operates in the NGOM. However, the limited access fleet would be prohibited from accessing the NGOM while participating in the DAS program. The limited access share of the NGOM TAC would be available through RSA compensation fishing only. Each year the Scallop FMP sets aside 1.25 million lb (566,990 kg) of scallops to fund research relevant to the FMP. RSA projects are selected through a competitive grants process, with priorities established by the Council. NMFS allocates award recipients a portion of the RSA quota and recipients use the money generated by the sale of the awarded RSA quota, to fund the proposed research. This action would allow NMFS to allocate the limited access portion of the NGOM TAC (65,000 lb (29,484 kg)) to be harvested as RSA compensation quota. This allocation would not be in addition to the 1.25 million lb (566,990 kg) RSA quota. When allocating this quota to specific projects, NMFS would give priority to projects that are relevant to the NGOM. Any limited access or LAGC vessels that NMFS awards NGOM RSA compensation pounds would be required to declare into the area and fish exclusively within the NGOM management area. Any NGOM RSA harvest overages would be deducted from the following year's limited access NGOM TAC.

Capping removals for all fishery components at the specified portion of the NGOM TAC and requiring that all NGOM trips take place exclusively in the NGOM would allow the Council and NMFS to fully understand total removals from the area. Making the limited access share of the NGOM TAC available for RSA compensation fishing would be a short-term solution to utilize a small limited access portion of the NGOM TAC with the expectation that a more formal allocation and harvest strategy would be developed in a future amendment.

The Council has reviewed the NGOM portions of the Framework 29 proposed rule regulations as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Sea Scallop FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

An IRFA has been prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA consists of Framework 29 analyses of the NGOM measures, the draft IRFA, and the preamble to this proposed rule.

Description of the Reasons Why Action by the Agency Is Being Considered and Statement of the Objectives of, and Legal Basis for, This Proposed Rule

This action proposes the management measures and specifications for the Atlantic sea scallop fishery in the NGOM for 2018, with 2019 default measures. A description of the action, why it is being considered, and the legal basis for this action are contained in the Council's Framework 29 document and the preamble of this proposed rule and are not repeated here.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This action contains no new collection-of-information, reporting, or recordkeeping requirements. Accordingly, this proposed rule does not implicate the Paperwork Reduction Act.

Federal Rules Which May Duplicate, Overlap or Conflict With This Proposed Rule

The proposed regulations do not create overlapping regulations with any state regulations or other federal laws.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The proposed regulations would affect all vessels with limited access and LAGC scallop permits, but there is no differential effect based on whether the affected entities are small or large. Framework 29 provides extensive information on the number and size of vessels and small businesses that would be affected by the proposed regulations, by port and state (see **ADDRESSES**). Fishing year 2016 data were used for this analysis because these data are the most recent complete data set for a fishing year. There were 313 vessels that obtained full-time limited access permits in 2016, including 250 dredge, 52 small-dredge, and 11 scallop trawl permits. In the same year, there were also 34 part-time limited access permits

in the sea scallop fishery. No vessels were issued occasional scallop permits. NMFS issued 225 LAGC IFQ permits in 2016, and 125 of these vessels actively fished for scallops that year. The remaining permit holders likely leased out scallop IFQ allocations with their permits in Confirmation of Permit History. In 2016, there were 27 NGOM vessels that actively fished.

For RFA purposes, NMFS defines a small business in shellfish fishery as a firm that is independently owned and operated with receipts of less than $11 million annually (see 50 CFR 200.2). Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by this proposed rule. Furthermore, multiple permitted vessels and/or permits may be owned by entities with various personal and business affiliations. For the purposes of this analysis, ''ownership entities'' are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an ''ownership entity.'' For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one ''ownership entity,'' that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate ''ownership entity'' for the purpose of this analysis.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership dataset is based on the calendar year 2016 permits and contains average gross sales associated with those permits for calendar years 2014 through 2016. Matching the potentially impacted 2016 fishing year permits described above (limited access permits and LAGC IFQ permits) to calendar year 2016 ownership data results in 161 distinct ownership entities for the limited access fleet and 115 distinct ownership entities for the LAGC IFQ fleet. Of these, and based on the Small Business Administration guidelines, 154 of the limited access distinct ownership entities and 113 of the LAGC IFQ entities are categorized as small. The remaining seven of the limited access and two of the LAGC IFQ entities are categorized as large entities. The number of distinct small business entities with NGOM permits and active NGOM vessels were 27 in 2016 permits.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize any Significant Economic Impact on Small Entities

The Council considered three alternatives for setting a TAC in the NGOM: Alternative 1 (No Action, 95,000 lb (43,091 kg) TAC and no changes to management), Alternative 2 (Set NGOM TAC using exploitable biomass projections for 2018 and 2019, cap removals for all fishery components, and apply limited access share of TAC toward RSA compensation fishing), and Alternative 3 (Set NGOM TAC at 0 lb (0 kg)). Under the Council's preferred alternative, Alternative 2, there were two options for setting the TAC and each of these options had two sub-options for splitting the TAC between the limited access and the LAGC fleets. Option 1 (setting that TAC based on F = 0.15) included these two sub-options to split the TAC: Sub-option 1 (allocating the first 70,000 lb (31,751 kg) to LAGC fleet and the remaining TAC is split equally), and sub-option 2 (first 95,000 lb (43,091 kg) to LAGC fleet and the remaining TAC is split 25(LAGC)/75(limited access)). These two sub-options are described in Table 2. Under these sub-options scallop revenues and net revenues of the small business entities for the NGOM vessels would increase relative to No Action levels ranging from 19 percent to 27 percent. However, the preferred alternative (Alternative 2, Option 2, Sub-Option 1) would result in the highest economic benefits for this fishery with an estimated increase in net revenues by 42 percent compared to both Alternative 1 (No Action) and Alternative 3 (Set NGOM TAC at 0 lb (0 kg)).

TABLE 2—IMPACTS OF THE PREFERRED ALTERNATIVE 2 FOR NGOM SCALLOP FISHERY

[2018 Fishing Year]

	Option 1 (F = 0.15)	Option 2 (F = 0.18)—Preferred
Split Sub-Option 1 (70,000 lb (31,751 kg) then 50/50) Preferred		
LA scallop pounds	47500 lb (21546 kg)	65000 lb (29,484 kg)
LAGC scallop pounds	117500 lb (53297 kg)	135000 lb (61,235 kg)
Total Pounds	165000 lb (74843 kg)	200000 lb (90,718 kg)
Net revenue (in 2017 Mill. $)	1.13	1.29
Net Revenue under No Action (Alternative 1, in 2017 Mill. $).	0.91	0.91
Percent Change in net revenue per vessel and per business entity.	24 percent	42 percent
Split Sub-Option 2 (95,000 lb (43,091 kg) then 25/75)		
LA scallop pounds	52,500 lb (23,814 kg)	78,750 lb (35,720 kg)
LAGC scallop pounds	112,500 lb (51,029 kg)	121,250 lb (54,998 kg)
Total Pounds	16,5000 lb (74,843 kg)	200,000 lb (90,718 kg)
Estimated LA RSA value	$643,125	$964,687.5
Estimated LAGC scallop revenue	$1,378,125	$1,485,313
net revenue (2017 Mill. $)	1.08	1.16
Net Revenue under No Action (Alternative 1, in 2017 Mill. $)).	0.91	0.91
Percent Change in net revenue	19 percent	27 percent

The economic impacts of the preferred NGOM alternative on the limited access vessels could range, however, from low negative to neutral. In both 2016 and 2017, limited access vessels were active in the NGOM

management area until it closed when the LAGC component was projected to have reached its TAC. Approximately 67 limited access vessels operated within the NGOM management area in 2017 while operating under DAS. Depending on the scallop resource productivity in the open areas, the cap on limited access landings from the NGOM and the requirement that limited access share would be harvested as RSA compensation fishing could have some marginally low negative impacts on the limited access fishery due to effort displacement to other areas which may not be as productive as the NGOM scallop fishery.

List of Subjects 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 13, 2018.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEAST UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

Subpart A—General Provisions

■ 2. In § 648.10, revise paragraphs (f) introductory text, (f)(2) introductory text, and (f)(4)(i) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(f) Atlantic sea scallop vessel VMS notification requirements. Less than 1 hour prior to leaving port, the owner or authorized representative of a scallop vessel that is required to use VMS as specified in paragraph (b)(1) of this section must notify the Regional Administrator by transmitting the appropriate VMS code that the vessel will be participating in the scallop DAS program, Area Access Program, LAGC scallop fishery, fishing in the Northern Gulf of Maine management area, or will be fishing outside of the scallop fishery under the requirements of its other Federal permits, or that the vessel will be steaming to another location prior to commencing its fishing trip by transmitting a ''declared out of fishery'' VMS code. If the owner or authorized representative of a scallop vessel declares out of the fishery for the steaming portion of the trip, the vessel cannot possess, retain, or land scallops, or fish for any other fish. Prior to commencing the fishing trip following a ''declared out of fishery'' trip, the owner or authorized representative must notify the Regional Administrator by transmitting the appropriate VMS code, before first crossing the VMS Demarcation Line, that the vessel will be participating in the scallop DAS program, Area Access Program, or LAGC scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

* * * * *

(2) *NGOM scallop fishery.* A NGOM scallop vessel is deemed to be fishing in Federal waters of the NGOM management area and will have its landings applied against the LAGC portion of the NGOM management area TAC, specified in § 648.62(b)(1), unless:

* * * * *

(4) *Catch reports.* (i) The owner or operator of a limited access or LAGC scallop vessel with an IFQ permit that fishes for, possesses, or retains scallops, and is not fishing under a NE Multispecies DAS or sector allocation, must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished, including open area trips, access area trips as described in § 648.59(b)(9), Northern Gulf of Maine RSA trips, and trips accompanied by a NMFS-approved observer. The reports must be submitted for each day (beginning at 0000 hr and ending at 2400 hr) and not later than 0900 hr of the following day. Such reports must include the following information:

(A) VTR serial number;

(B) Date fish were caught;

(C) Total pounds of scallop meats kept;

(D) Total pounds of all fish kept.

* * * * *

■ 3. In § 648.14:

■ a. Revise paragraphs (i)(1)(iii)(A)(*1*)(*ii*) and (*iv*), and (i)(1)(viii)(A) and (B);

■ b. Add paragraph (i)(2)(iii)(E); and

■ c. Revise paragraphs (i)(3)(iii)(C) and(D).

The revisions and additions read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(iii) * * *

(A) * * *

(*1*) * * *

(*ii*) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is properly declared into the scallop DAS, Area Access program, or the NGOM management area.

* * * * *

(iv) The scallops were harvested by a vessel that has been issued and carries on board an NGOM or IFQ scallop permit, and is properly declared into the NGOM scallop management area, and the LAGC portion of the NGOM TAC specified in § 648.62 has not been harvested.

* * * * *

(viii) *Scallop research.* (A) Fail to comply with any of the provisions specified in § 648.56 or the conditions of a letter of authorization issued under § 648.56.

(B) Fish for scallops in, or possess or land scallops from the NGOM, unless allocated NGOM RSA allocation as described in § 648.56(d) and fishing on a scallop research set aside compensation trip.

* * * * *

(2) * * *

(iii) * * *

(E) Fish for, possess, or land scallops from the NGOM, unless on a scallop RSA compensation trip and allocated NGOM RSA allocation as described in § 648.56(d).

* * * * *

(3) * * *

(iii) * * *

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the **Federal Register** stating that the LAGC portion of the NGOM scallop management area TAC has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

(D) Fish for, possess, or land scallops in or from the NGOM scallop management area after the effective date of a notification published in the **Federal Register** that the LAGC portion of the NGOM scallop management area TAC has been harvested, as specified in § 648.62, unless the vessel possesses or lands scallops that were harvested south of 42°20′ N lat., the vessel is transiting the NGOM scallop management area, and the vessel's fishing gear is properly stowed and not available for immediate use in accordance with § 648.2 or unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or

unless the vessel is participating in the scallop RSA program as specified in § 648.56.

* * * * *

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

■ 4. In § 648.56 revise paragraphs (c) and (d) to read as follows:

§ 648.56 Scallop research.

* * * * *

(c) NOAA shall make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits, or take additional trips into Open, Access Areas, or the NGOM management area. NMFS shall provide authorization of such activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional Administrator, which must be kept on board the vessel.

(d) Available RSA allocation shall be 1.25 million lb (567 mt) annually, which shall be deducted from the ABC/ACL specified in § 648.53(a) prior to setting ACLs for the limited access and LAGC fleets, as specified in § 648.53(a)(3) and (4), respectively. Approved RSA projects shall be allocated an amount of scallop pounds that can be harvested in open areas, available access areas, and the NGOM. The specific access areas that are open to RSA harvest and the amount of NGOM allocation to be landed through RSA harvest shall be specified through the framework process as identified in § 648.59(e)(1). In a year in which a framework adjustment is under review by the Council and/or NMFS, NMFS shall make RSA awards prior to approval of the framework, if practicable, based on total scallop pounds needed to fund each research project. Recipients may begin compensation fishing in open areas prior to approval of the framework, or wait until NMFS approval of the framework to begin compensation fishing within approved access areas.

* * * * *

■ 5. In § 648.62:

■ a. Revise paragraphs (a)(2) through (a)(4), (b), (c), and (d); and

■ b. Add paragraph (a)(5).

The addition and revisions to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

(a) * * *

(2) Scallop landings by vessels issued NGOM permits shall be deducted from the LAGC portion of the NGOM scallop total allowable catch when vessels fished all or part of a trip in the Federal waters portion of the NGOM. If a vessel with a NGOM scallop permit fishes exclusively in state waters within the NGOM, scallop landings from those trips will not be deducted from the Federal NGOM quota.

(3) Scallop landings by all vessels issued LAGC IFQ scallop permits and fishing in the NGOM scallop management area shall be deducted from the LAGC portion of the NGOM scallop total allowable catch specified in the specifications or framework adjustment processes defined in § 648.55. Scallop landings by LAGC IFQ scallop vessels fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQs. Landings by incidental catch scallop vessels shall not be deducted from the NGOM total allowable catch specified in paragraph (b) of this section.

(4) A vessel issued a NGOM or LAGC IFQ scallop permit that fishes in the NGOM may fish for, possess, or retain up to 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops, and may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line. A vessel issued an incidental catch general category scallop permit that fishes in the NGOM may fish for, possess, or retain only up to 40 lb of shucked or 5 U.S. bu (1.76 hL) of in-shell scallops, and may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(5) Scallop landings by all vessels issued scallop permits and fishing in the NGOM under the scallop RSA program (as specified in § 648.56) shall be deducted from the limited access portion of the NGOM scallop total allowable catch.

(b) *Total allowable catch.* The total allowable catch for the NGOM scallop management area shall be specified through the framework adjustment process. The total allowable catch for the NGOM scallop management area shall be based on the Federal portion of the scallop resource in the NGOM. The total allowable catch shall be determined by historical landings until additional information on the NGOM scallop resource is available, for example through an NGOM resource survey and assessment. The ABC/ACL as defined in § 648.53(a) shall not include the total allowable catch for the NGOM scallop management area, and landings from the NGOM scallop management area shall not be counted against the ABC/ACL defined in § 648.53(a). The total allowable catch shall be divided between the limited access and the LAGC fleets.

(1) *NGOM annual hard TACs.* The LAGC and the limited access portions of the annual hard TAC for the NGOM 2018 and 2019 fishing years are as follows:

Fleet	2018		2019 (default)	
	lb	kg	lb	kg
LAGC	135,000	61,235	102,500	46,493
Limited access	65,000	29,484	32,500	14,742
Total	200,000	90,718	135,000	61,235

(2) Unless a vessel has fished for scallops outside of the NGOM scallop management area and is transiting the NGOM scallop management area with all fishing gear stowed and not available for immediate use as defined in § 648.2, no vessel issued an LAGC or limited access scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the NGOM scallop management area once the Regional Administrator has provided notification in the **Federal Register** that the vessel's respective portion(s) of the NGOM scallop total allowable catch in accordance with paragraph (b)(1) has been reached, unless the vessel is participating in the scallop RSA program as specified in § 648.56, has been allocated NGOM RSA pounds, and the limited access portion of the NGOM TAC has not been reached. Once the NGOM hard TAC is reached, a vessel issued a NGOM permit may no longer declare a state-only NGOM scallop trip and fish for scallops exclusively in state waters within the NGOM, unless

participating in the state waters exemption program as specified in § 648.54. A vessel that has not been issued a Federal scallop permit that fishes exclusively in state waters is not subject to the closure of the NGOM scallop management area.

(3) If either the LAGC or the limited access portion of the annual NGOM TAC is exceeded, the amount of NGOM scallop landings in excess of the portion of the TAC specified in paragraph (b)(1) of this section shall be deducted from the respective portion(s) of the NGOM TAC which has been exceeded for the subsequent fishing year, as soon as practicable, once scallop landings data for the NGOM management area is available.

(c) *VMS requirements.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have declared a NGOM trip under the scallop RSA program, a vessel issued a scallop permit pursuant to § 648.4(a)(2) that intends to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in § 648.10. If the vessel has a NGOM permit, the vessel must declare either a Federal NGOM trip or a state-waters NGOM trip. If a vessel intends to fish any part of a NGOM trip in Federal NGOM waters, it may not declare into the state water NGOM fishery.

(d) *Gear restrictions.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have properly declared a NGOM trip under the scallop RSA program, the combined dredge width in use by, or in possession on board, LAGC scallop vessels fishing in the NGOM scallop management area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

* * * * *

[FR Doc. 2018–03319 Filed 2–16–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 83, No. 34

Tuesday, February 20, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 14, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by March 22, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC, 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Federal and Non-Federal Financial Assistance Instruments.

OMB Control Number: 0596–0217.

Summary of Collection: In order to carry out specific Forest Service (FS) activities, Congress created several authorities to assist the Agency in carrying out its mission. Authorized by the Federal Grants and Cooperative Agreements Act (FGCAA), the FS issues Federal Financial Assistance awards, (*i.e.,* grants and cooperative agreements). Agency specific authorities and appropriations also support use of Federal Financial Assistance awards. In addition to FFA, Congress created specific authorizations for acts outside the scope of the FGCAA. Appropriations language was developed to convey authority for the Forest Service to enter into relationships that are outside the scope of the FGCAA. Information in this request is collected from individuals; non-profit and for-profit institutions; institutions of higher education and state, local, and Native American tribal governments etc. Multiple options are available for respondents to respond including forms, non-forms, electronically, face-to-face, by telephone and over the internet.

Need and Use of the Information: From the pre-award to the close-out stage, FS will collect information from respondents on forms, via emails, meetings, and telephone calls. Using various forms respondents will describe the type of project, project scope, financial plan and other factors. To reach management decision on several Office of the Inspector General (OIG) Recommendations from the American Recovery and Reinvestment Act—Forest Service Hazardous Fuels Reduction and Ecosystem Restoration Projects on Non-Federal Lands Audit (Report No. 08703–0005–SF, Issued March 2013), several new forms were created. In addition, mandatory post-award meetings must be held for each new Federal financial assistance award. Without this information the FS would not be able to develop, implement, monitor and administer these agreements and comply with the OIG audit recommendations.

Description of Respondents: Business or other for-profit; Not-for-profit Institutions; State, Local or Tribal Government; Individuals.

Number of Respondents: 4,874.

Frequency of Responses: Recordkeeping; Reporting: Quarterly; On occasion.

Total Burden Hours: 49,751.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–03348 Filed 2–16–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Agency Information Collection Activities: Revision and Extension of Approved Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

February 14, 2018.

AGENCY: The Office of the Chief Information Officer (OCIO), Department of Agriculture.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Department of Agriculture (USDA), the Office of the Chief Information Officer (OCIO) has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to OMB for approval under the Paperwork Reduction Act.

DATES: Comments must be submitted by March 22, 2018.

ADDRESSES: Written comments may be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Ruth Brown (202) 720–8958.

SUPPLEMENTARY INFORMATION:

Title: 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 Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received seven comments in response to the 60-day notice published in the **Federal Register** on December 5, 2017 (82 FR 57423). The comments were not related to the collection package or to USDA.

The Office of the Chief Information Officer—0503–0021

Current Actions: Revision and Extension of Currently Approved Collection.

Type of Review: Revision and Extension.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of activities: 20.

Respondents: 30,000.

Annual responses: 30,000.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 15,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–03370 Filed 2–16–18; 8:45 am]

BILLING CODE 3410–KR–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 14, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 22, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Office of Procurement and Property Management

Title: Guidelines for the Transfer of Excess Computer or Other Technical Equipment Pursuant to Section 14220 of the 2008 Farm Bill.

OMB Control Number: 0505–0023.

Summary of Collection: In accordance with procedures in the Federal Management regulation, Subpart 102–36.295, each agency is responsible for submitting an annual report to the General Services Administration of all personal property furnished to non-Federal recipients. Respondents will be authorized representatives of a city, town, or local government entity located in a rural area as defined in 7 U.S.C. 1991(a)(13)(A).

Need and Use of the Information: USDA requires information to: verify eligibility of requestors; determine availability of excess property; have contact information of the requestor available; and to ensure an organization is designated to receive property on behalf of an eligible recipient. Information is collected via letters from requestors. The request must include: (1) Type of excess computers or other technical equipment requested; (2) Justification for eligibility; (3) Contact information of the requestor; (4) Logistical information such as when and how the property will be picked up; and (5) Information on the recipient's designated organization that will receive and refurbish the property for the recipient. Information will be used to coordinate the transfer of excess property to eligible recipients and as input for the required annual report, of all personal property furnished to non-Federal recipients, to the General Service Administration.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 10.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–03336 Filed 2–16–18; 8:45 am]

BILLING CODE 3410–TX–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2017–0098]

Notice of Availability of an Evaluation of the Classical Swine Fever and Swine Vesicular Disease Status of Japan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that we are proposing to recognize Japan as being free of classical swine fever and swine vesicular disease. This proposed recognition is based on a risk evaluation we have prepared in connection with this action, which we are making available for review and comment.

DATES: We will consider all comments that we receive on or before March 22, 2018.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docket Detail;D=APHIS-2017-0098.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2017–0098, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docket Detail;D=APHIS-2017-0098* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Kelly Rhodes, Senior Staff Veterinarian, Regionalization Evaluation Services, National Import Export Services, VS, APHIS, USDA, 4700 River Road Unit 38, Riverdale, MD 20737–1231; email: *Kelly.Rhodes@aphis.usda.gov;* (301) 851–3315.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including classical swine fever (CSF) and swine vesicular disease (SVD). These are dangerous and communicable diseases of swine.

Within part 94, § 94.9 contains requirements governing the importation of pork and pork products from regions where CSF exists. Section 94.10 contains importation requirements for swine from regions where CSF is considered to exist. Section 94.12 contains requirements governing the importation of pork or pork products from regions where SVD exists. Section 94.14 prohibits the importation of domestic swine which are moved from or transit any region in which SVD is known to exist.

In accordance with §§ 94.9(a)(1) and 94.10(a)(1), the Animal and Plant Health Inspection Service (APHIS) maintains a web-based list of regions which the Agency considers free of CSF. Sections 94.9(a)(2) and 94.10(a)(2) state that APHIS will add a region to this list after it conducts an evaluation of the region and finds that CSF is not present.

Similarly, in accordance with § 94.12(a)(1), APHIS maintains a web-based list of regions which the Agency considers free of SVD. Paragraph (a)(2) of this section states that APHIS will add a region to this list after it conducts an evaluation of the region and finds that SVD is not present.

The regulations in § 92.2 contain requirements for requesting the recognition of the animal health status of a region (as well as for the approval of the export of a particular type of animal or animal product to the United States from a foreign region). If, after review and evaluation of the information submitted in support of the request, APHIS believes the request can be safely granted, APHIS will make its evaluation available for public comment through a document published in the **Federal Register**. Following the close of the comment period, APHIS will review all comments received and will make a final determination regarding the request that will be detailed in another document published in the **Federal Register**.

The Government of Japan has requested that APHIS evaluate the CSF and SVD disease status of the country. In response to Japan's request, we have prepared an evaluation, titled ''APHIS Evaluation of the Classical Swine Fever and Swine Vesicular Disease Status of Japan'' (September 2017). Based on the evaluation, we have determined that Japan is free of both CSF and SVD. APHIS has also determined that the surveillance, prevention, and control measures implemented by Japan are sufficient to minimize the likelihood of introducing CSF and SVD into the United States via imports of species or products susceptible to these diseases. Our determination supports adding Japan to the web-based lists of regions which APHIS considers free of CSF and SVD.

Therefore, in accordance with § 92.2(e), we are announcing the availability of our evaluation of the CSF and SVD status of Japan for public review and comment. We are also announcing the availability of an environmental assessment (EA), which has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provision of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). The evaluation and EA may be viewed on the *Regulations.gov* website or in our reading room. (Instructions for accessing *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this notice.) The documents are also available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Information submitted in support of Japan's request is available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

After reviewing any comments we receive, we will announce our decision regarding the disease status of Japan with respect to CSF and SVD in a subsequent notice.

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 14th day of February 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–03369 Filed 2–16–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[FNS–2017–0044]

Food Crediting in Child Nutrition Programs: Request for Information; Extension of Comment Period

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice; Extension of Comment Period.

SUMMARY: The National School Lunch Program, School Breakfast Program, Child and Adult Care Food Program, and Summer Food Service Program (Child Nutrition Programs), which are administered by the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), play a critical role in ensuring that America's children have access to the nutritious food they need to learn and succeed in the classroom, afterschool, and during the summer. It is FNS' responsibility to establish and support the meal patterns and nutrition standards (collectively referred to as meal patterns) in the Child Nutrition Programs that advance the goals of providing nutritious and satisfying meals to a broad population of children. At the same time, FNS works to simplify the menu planning process for Program operators to promote the efficient use of Program funds and provide a wide variety of food choices to menu planners and children.

In order to claim Federal reimbursement, Child Nutrition Program operators must serve meals and snacks that meet the minimum meal pattern requirements of the respective Program. Crediting is the process designed by FNS to specify how individual food items contribute to the Child Nutrition Programs' meal patterns. Several factors impact how food products can credit toward reimbursable meals, such as volume, weight, and overall nutrient profile.

The purpose of this Request for Information is to help FNS gather feedback from a wide variety of stakeholders on how FNS' crediting system can best address today's evolving food and nutrition environment, as well as to offer first-rate customer service to those operating and benefitting from the Child Nutrition Programs. FNS welcomes comments from all interested stakeholders. While FNS is interested in your general comments about the crediting process, FNS also invites comments on the crediting of several specific food products. FNS is especially interested in understanding both the possible benefits and any negative impacts associated with potential changes to how certain foods may or may not credit.

FNS is extending the comment period to provide additional time for interested parties to review this Request for Information.

DATES: The comment period for the Request for Information that was published on December 14, 2017 (82 FR 58792) has been extended from February 12, 2018 to April 23, 2018. To be assured of consideration, comments must be received on or before April 23, 2018.

ADDRESSES:

Preferred method: Submit information through the Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the online instructions for submissions.

Mail: Submissions should be addressed to School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, 3101 Park Center Drive, 12th floor, Alexandria, Virginia 22302.

All comments submitted in response to this notice will be included in the record and will be made available to the public at *http://www.regulations.gov*. Please be advised that the substance of the comments and the identity of the individuals or entities commenting will be subject to public disclosure.

FOR FURTHER INFORMATION CONTACT: Tina Namian, Branch Chief, Policy and Program Development, Child Nutrition Programs, Food and Nutrition Service at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

Child Nutrition Programs' Nutrition Standards

One of the United States Department of Agriculture (USDA), Food and Nutrition Service's (FNS) highest priorities is to ensure that participants in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP) (collectively referred to as the Child Nutrition Programs) receive wholesome, nutritious, and tasty meals. The Richard B. Russell National School Lunch Act (NSLA) and the Child Nutrition Act of 1966 (CNA) authorize FNS to establish meal patterns and nutrition standards (collectively referred to as meal patterns) for the Child Nutrition Programs. The NSLA requires FNS to develop meal patterns that are consistent with the recommendations of the most recent Dietary Guidelines for Americans (Dietary Guidelines) and current nutrition research.

The Child Nutrition Programs' meal patterns establish the foods and minimum serving sizes that must be served for a meal or snack to be reimbursable. The meal patterns are currently based on food groups (components), not individual nutrients. A reimbursable meal or snack includes a certain amount (or combination) of vegetables, fruits, fluid milk, grains, and meats or meat alternates (*e.g.,* protein foods, such as chicken, and dairy foods, such as yogurt). Each Child Nutrition Program has individualized meal patterns for the various age and grade groups that participate in the Program. The meal patterns were created to enable children to be self-sufficient by providing the adequate and consistent levels of foods and nutrients children need to learn and grow, as well as help children build healthy habits that can last a lifetime.

Crediting Methodology

Crediting is the process established by FNS to determine how individual foods contribute to the Child Nutrition Programs' meal patterns. A food is considered creditable when it meets the minimum standards that count toward a reimbursable meal or snack. Generally, this means foods are grouped into categories of similar foods which are credited in a similar way.

The main focus of FNS' crediting system is to provide simple information that allows Child Nutrition Program operators to (1) easily plan menus with foods and quantities that meet the meal patterns, and (2) offer foods in a way that encourages healthy habits and teaches children how to build balanced meals. Crediting information is conveyed through resources such as FNS' *Food Buying Guide for Child Nutrition Programs* and other technical assistance materials.

A number of factors impact how foods credit toward a reimbursable meal. It is critical that crediting decisions be made on the fullest range of factors possible to ensure transparency and consistency in the crediting process. The overall nutrient profile of a food is a primary consideration. Foods in each food component are based on a range of nutrients instead of an individual food's nutrient profile. For example, foods in the meats/meat alternates component are grouped based on a collection of nutrients that include protein, B vitamins, selenium, choline, phosphorus, zinc, and copper. Therefore, different varieties of meat (*e.g.,* lean beef versus turkey) are not currently evaluated separately based on their protein content. The volume or weight of the food is also an important

factor in making crediting determinations. All meats/meat alternates and grains are credited in ounces equivalencies. Fruits, vegetables, and fluid milk are credited based on volume served.

In addition, foods that credit toward a reimbursable meal in the Child Nutrition Programs sometimes have a Federal standard of identity. Standards of identity are established by the U.S. Food and Drug Administration (FDA) and the USDA Food Safety and Inspection Service (FSIS). They are mandatory requirements that determine what a food must contain to be marketed under a certain name. For example, for a product to be labeled peanut butter, it must meet the standard of identity requirements that specify the amount and type of ingredients that may be included. Standards of identity assist FNS in crediting because they provide a common standard under which specific foods are made. This allows FNS to set crediting policy with confidence that products from all manufacturers will have the same characteristics and, thus, make a consistent contribution to the meal patterns. There are some products on the commercial market that do not have an FDA or FSIS standard of identity, but have industry-defined standards. FNS first considers Federal standards of identity when making crediting decisions. When a Federal standard of identity does not exist, then FNS may use industry standards for production to better understand the manufacturing process.

FNS also considers the customary use of a product. For example, some foods are typically consumed as a snack food and have not been considered appropriate for including as part of a meal in the Child Nutrition Programs. Therefore, they are currently not creditable. This is discussed more in section II. Questions and Answers. Finally, FNS considers the role of the Child Nutrition Program in teaching children healthy eating habits when making crediting decisions.

Purpose and Scope

FNS' objective in issuing this Request for Information is to receive input from a broad spectrum of stakeholders to assist FNS in making informed decisions on how FNS' crediting system can best address today's evolving food and nutrition environment, ensure children have access to the nutrition they need, and offer excellent customer service to those operating and benefitting from the Child Nutrition Programs. It is important that FNS' crediting system balances the nutritional needs of the Child Nutrition Programs' participants, as recommended by the Dietary Guidelines, and the need to offer flexibility and a wide range of choices. FNS recognizes that new or reformulated food products are regularly entering the food market. These new or reformulated food products can offer more choices to menu planners and children.

FNS is especially interested in understanding both the possible benefits and any negative impacts associated with potential changes to how certain foods may or may not credit. As such, FNS is seeking feedback from all interested stakeholders on the questions listed below. Some questions address specific foods due to a high volume of interest in those products. However, FNS is open to feedback about the creditability of other food products as well (see Questions 20–25) and crediting process in general. Additionally, while all comments are welcome, FNS is particularly interested in comments that are consistent with the current statutory framework for the Child Nutrition Programs.

II. Questions

Factors To Determine Crediting

FNS currently considers the following factors when making crediting decisions:

• *Volume or weight of the food.* All meats/meat alternates and grains are credited in ounces. Fruits, vegetables, and fluid milk are credited based on volume served. However, dried fruit credits at twice the volume served and raw, leafy greens credit as half the volume served. Additionally, tomato puree and tomato paste credit as if they were reconstituted, instead of as volume served.

1. Is it appropriate to continue to credit foods based on the volume or weight served, with the few exceptions discussed above? Why or why not?

2. What are the benefits and negative impacts of having different crediting values for different forms of vegetables and fruits?

• *Overall nutrient profile.* Foods in each component are based on a range of nutrients instead of an individual food's nutrient profile. For example, foods in the meats/meat alternates component are grouped based on a collection of nutrients that include protein, B vitamins, selenium, choline, phosphorus, zinc, copper, and vitamins D and E. Generally, FNS has not considered fortification in the creditability of foods.

3. Should fortification play a role in determining if and how a food is credited in the Child Nutrition Programs? Why or why not?

4. Is the presence of certain nutrients more important than other nutrients when determining if and how a food credits in the Child Nutrition Programs? Why or why not?

• *Federal standards of identity and industry standards of production.* Many creditable food products in the Child Nutrition Programs have Federal standards of identity or industry standards for production. Standards of identity assist FNS in crediting because they ensure food products with the same name have the same characteristics and, therefore, make a consistent contribution to the meal patterns.

5. If a food product does not have a Federal standard of identity or industry standards for production, how could these food products credit in the Child Nutrition Programs? Please be as specific as possible.

• *Customary use of the food product.* Some foods are generally consumed as snacks and, therefore, have not been considered appropriate for service in the Child Nutrition Programs. In other cases, the volume of food required to meet the minimum serving size would be unreasonably large. In other cases, such products do credit. For example, tortillas and tortilla products, such as taco shells, may credit as a grain item in the Child Nutrition Programs because in certain cultures they are served as the grain component of a meal. (Please see below for more information about snack-type foods.)

6. Is it appropriate to continue to consider the customary use of a product when determining how a food credits in the Child Nutrition Programs? Why or why not?

• *The role of the Child Nutrition Program in teaching children healthy eating habits.* Meals and snacks served in the Child Nutrition Programs act as a teaching tool for children by visually demonstrating how to build a healthy, balanced meal with the key food groups and amounts recommended by the Dietary Guidelines. For example, although pasta made from lentils has a standard of identity and may be used in all Child Nutrition Programs, in order for the pasta to credit as a vegetable, it must be served with another vegetable, such as broccoli or tomato sauce, to help children recognize the vegetable component. Likewise, lentil pasta can credit as a meat alternate if it is served with another meat/meat alternate, such as chicken or black beans.

7. What role should such educational considerations play in determining the

creditability of a food in the Child Nutrition Programs?

8. Are there other factors FNS should consider in determining how foods credit in the Child Nutrition Programs? Why or why not?

9. Are there additional ways FNS can make the crediting process more simple, fair, or transparent? Please be as specific as possible.

Foods From the Meat/Meat Alternate Component

Shelf-stable, Dried or Semi-dried Meat, Poultry, and Seafood Snacks, and Surimi: Currently, shelf stable, dried and semi-dried meat, poultry, and seafood products, such as beef jerky or summer sausage, (collectively referred to as dried meat/poultry/seafood snacks) currently do not credit towards the Child Nutrition Programs' meal patterns. These foods have a Federal standard of identity that varies widely, there is a wide variety of industry standards for production, and they are typically seen as snack-type foods. However, FNS understands these products may be appealing to some Child Nutrition Program operators because dried meat/poultry/seafood snacks are shelf stable, work well with alternative meal delivery methods, such as breakfast in the classroom and lunches for field trips, and provide more choices to menu planners and children. Similarly, surimi, which is whitefish that is processed to resemble more expensive seafood and labeled as ''imitation,'' such as imitation crab, does not credit towards the Child Nutrition Programs' meal patterns. Surimi lacks an FDA standard of identity and there is a wide variety of industry standards for production. Additionally, foods labeled as ''imitation'' may have significantly different nutrition profiles than the foods they are meant to replace. To assist reviewers in adequately compiling public feedback, please provide separate comments on dried meat/poultry/seafood snacks, and imitation crab.

10. Are Child Nutrition Program operators currently offering any of these foods as an extra item that does not contribute to the Child Nutrition Programs' meal patterns? If so, which ones?

10a. If yes, how are they being served (*e.g.,* as an extra component at snack) and how often?

11. Should FNS allow any of these foods to contribute to the Child Nutrition Programs' meal patterns? Why or why not?

12. If any of these foods are allowed to contribute to the Child Nutrition Programs' meal patterns, how should they be credited? Be as specific as possible, such as the volume or weight needed, or a specific nutrient content.

12a. Is there an ingredient or processing method that would qualify or disqualify these products?

13. If any of these foods are allowed to contribute to the Child Nutrition Programs' meal patterns, would Child Nutrition Program operators incorporate these foods into menus to meet the meats/meat alternates requirement? Why or why not?

13a. If yes, how would they be served (*e.g.,* at snack, as part of a reimbursable lunch)?

14. If any of these foods are allowed to contribute to the Child Nutrition Programs' meal patterns, how would this impact the Child Nutrition Programs, including its participants and operators? What are the potential benefits and negative impacts?

Yogurt: Yogurt may be used to meet all or part of the meats/meat alternates component. It may be plain or flavored, unsweetened or sweetened, traditional (non-strained or non-thickened) or Greek or Greek-style (high protein, strained or thickened). Four ounces (weight) or ½ cup (volume) of traditional or high protein yogurt is credited as one ounce equivalent of meat alternate. This crediting was based on public comment (62 FR 10187, April 1997) and acknowledges the relatively low levels of iron and niacin in yogurt compared to other foods from the meats/meat alternates component. Since then, high protein yogurt has increased in popularity and availability. As such, FNS was asked to consider whether it would be beneficial to allow a lesser volume of high protein yogurt to credit toward the meat/meat alternate component compared to traditional yogurt. The rationale for this request was that high protein yogurt contains a higher level of protein per ounce versus traditional yogurt. Currently, crediting has not been based on an individual food's nutrient profile, or any one nutrient. That is, the contribution of a food towards the meat/meat alternate requirement is not based solely on the grams of protein. For example, different varieties of meat (*e.g.,* lean beef versus turkey) are not evaluated separately based on their protein content.

15. Are Child Nutrition Program operators currently offering high protein yogurt as part of a reimbursable meal?

16. Should FNS create a separate crediting standard for high protein yogurt that is different than the crediting standard for traditional yogurt for the Child Nutrition Programs? Why or why not?

17. If high protein yogurt is allowed to contribute differently to the Child Nutrition Programs' meal patterns than traditional yogurt, how should high protein yogurt be credited? Be as specific as possible, such as the volume or weight needed.

17a. Is there an ingredient or processing method that could qualify or disqualify a particular yogurt from crediting in the Child Nutrition Programs (*e.g.,* a particular thickening agent could disqualify a high protein yogurt)?

18. If high protein yogurt is allowed to contribute differently to the Child Nutrition Programs' meal patterns than traditional yogurt, would Child Nutrition Program operators take advantage of using it to meet the meats/meat alternates requirement? Why or why not?

18a. If yes, how would Child Nutrition Program operators serve it (*e.g.,* at snack, as part of a reimbursable lunch)?

19. If high protein yogurt is allowed to contribute differently to the Child Nutrition Programs' meal patterns than traditional yogurt, how would this impact the Child Nutrition Programs, including its participants and operators, as well as food manufacturers? What are the potential benefits and negative impacts?

Other Foods Not Currently Creditable

In the past, FNS has chosen not to credit a small number of other foods in the Child Nutrition Programs because these foods do not meet the requirement for any food component in the Child Nutrition Programs' meal patterns. For various reasons this has occurred, including being considered snack-type foods, lacking a standard of identity, or because the volume of food required to meet the minimum serving size would be unreasonably large. For example, foods such as popcorn, vegetable chips (does not include chips made from grain such as tortilla chips), bacon, and tempeh are currently not creditable for the aforementioned reasons. A list of various foods that do not currently credit in the Child Nutrition Programs is available in FNS' *Food Buying Guide for Child Nutrition Programs* under ''Other Foods'' (see *https://fns.usda.gov/sites/default/files/tn/fbg-section5-other.pdf*). Comments on any foods currently not creditable in the Child Nutrition Programs are welcome, using the following questions as a guide.

20. Are Child Nutrition Program operators currently offering any of these foods as an extra item that does not contribute to the Child Nutrition

Programs' meal patterns? If so, which ones?

21. Should FNS allow any of these foods to contribute to the Child Nutrition Programs' meal patterns? Why or why not? If so, which ones?

22. If any of these foods are allowed to contribute to the Child Nutrition Programs' meal patterns, how should they be credited? Be as specific as possible, such as the volume or weight needed, or a specific nutrient content.

22a. Is there an ingredient, processing method, or nutrient standard (*e.g.,* sodium content) that should qualify or disqualify any of these foods?

23. If any of these foods are allowed to contribute to the Child Nutrition Programs' meal patterns, would Child Nutrition Program operators incorporate them into menus to meet the Child Nutrition Programs' meal patterns? Why or why not?

23a. If yes, how would they be served (*e.g.,* as part of a reimbursable snack)?

24. If any of these foods are allowed to contribute to the Child Nutrition Programs' meal patterns, how would this impact the Child Nutrition Programs, including its participants and operators, as well as food manufacturers? What are the potential benefits and negative impacts?

25. Are there additional products not mentioned in this request for information that are currently not creditable, but you would wish to provide comments on? Please be as specific as possible.

FNS appreciates your thoughtful and responsive comments. FNS welcomes comments from all interested stakeholders and will consider all of them carefully. Your comments are essential to enabling FNS to provide first rate customer service to those we serve.

Dated: February 13, 2018.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2018–03376 Filed 2–16–18; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Alabama Advisory Committee for a Meeting To Hear Public Testimony Regarding Civil Rights and Voter Accessibility in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Alabama Advisory Committee (Committee) will hold a meeting on Thursday, February 22, 2018, from 9:00 a.m. to 5:00 p.m. CST, for the purpose of hearing public testimony regarding civil rights and voter access in the state.

DATES: The meeting will be held on Thursday, February 22, 2018, from 9:00 a.m. to 5:00 p.m. CST.

ADDRESSES: Connecting Life Center (Old Bellingham Center), 70 W Edmont Avenue, Montgomery, AL 36105.

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

SUPPLEMENTARY INFORMATION: This meeting is free and open to the public. Persons with disabilities requiring reasonable accommodations should contact the Midwest Regional Office prior to the meeting to make appropriate arrangements. Members of the public are invited to make statements during an open comment period. In addition, members of the public may submit written comments; the comments must be received in the regional office no later than March 31, 2017. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to David Barreras at *dbarreras@usccr.gov*. Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Alabama Advisory Committee link (*https://www.facadatabase.gov/committee/committee.aspx?cid=233&aid=17*) Select ''meeting details'' and then ''documents'' to download. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Opening Remarks and Introductions (9:00 a.m.–9:05 a.m.)
Panel 1: Alabama Secretary of State John Merrill (9:05 a.m.–9:30 a.m.)
Panel 2: U.S. Representative Terri Sewell (9:35 a.m.–10:15 a.m.)
Break (10:15 a.m.–10:30 a.m.)
Panel 3: Voter Access
Panel 4: Community Organizations
Open Comment Period: (4:00–5:00 p.m.)
Closing Remarks (5:00 p.m.)

Dated: February 13, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–03282 Filed 2–16–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Office of the Secretary

Estimates of the Voting Age Population for 2017

AGENCY: Office of the Secretary, Commerce.

ACTION: General notice announcing population estimates.

SUMMARY: This notice announces the voting age population estimates as of July 1, 2017 for each state and the District of Columbia. We are providing this notice in accordance with the 1976 amendment to the Federal Election Campaign Act.

FOR FURTHER INFORMATION CONTACT: Karen Battle, Chief, Population Division, U.S. Census Bureau, Room HQ–6H174, 4600 Silver Hill Road, Washington, DC 20233. Phone: 301–763–2071.

SUPPLEMENTARY INFORMATION: Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 52, United States Code, Section 30116(e), I hereby give notice that the estimates of the voting age population for July 1, 2017 for each state and the District of Columbia are as shown in the following table.

ESTIMATES OF THE VOTING AGE POPULATION FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2017

Area	Population 18 and over
United States	252,063,800
Alabama	3,779,274
Alaska	554,867
Arizona	5,382,780
Arkansas	2,298,739
California	30,476,517
Colorado	4,345,321
Connecticut	2,844,358
Delaware	757,455
District of Columbia	569,480
Florida	16,782,417
Georgia	7,914,681
Hawaii	1,121,794
Idaho	1,273,151
Illinois	9,904,838

ESTIMATES OF THE VOTING AGE POPULATION FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2017—Continued

Area	Population 18 and over
Indiana	5,093,409
Iowa	2,413,764
Kansas	2,200,585
Kentucky	3,443,650
Louisiana	3,575,930
Maine	1,083,273
Maryland	4,704,671
Massachusetts	5,489,864
Michigan	7,785,662
Minnesota	4,277,949
Mississippi	2,270,533
Missouri	4,730,561
Montana	821,604
Nebraska	1,444,343
Nevada	2,312,576
New Hampshire	1,084,022
New Jersey	7,026,626
New Mexico	1,599,980
New York	15,694,902
North Carolina	7,971,073
North Dakota	579,621
Ohio	9,053,374
Oklahoma	2,971,579
Oregon	3,269,157
Pennsylvania	10,141,022
Rhode Island	852,307
South Carolina	3,919,695
South Dakota	654,810
Tennessee	5,208,482
Texas	20,938,557
Utah	2,175,134
Vermont	506,832
Virginia	6,600,844
Washington	5,759,927
West Virginia	1,446,139
Wisconsin	4,512,839
Wyoming	442,832

Source: U.S. Census Bureau, Population Division, Vintage 2017 Population Estimates.

I have certified these estimates for the Federal Election Commission.

Dated: February 1, 2018.

Wilbur Ross,

Secretary, U.S. Department of Commerce.

[FR Doc. 2018–03372 Filed 2–16–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on March 6, 2018, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Open Session:

1. Opening remarks and introductions.
2. Presentation of papers and comments by the Public.
3. Discussions on results from last, and proposals from last Wassenaar meeting.
4. Report on proposed and recently issued changes to the Export Administration Regulations.
5. Other business.

Closed Session:

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than February 27, 2018.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 13, 2018, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with matters the premature disclosure of which would be likely to frustrate significantly implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2018–03397 Filed 2–16–18; 8:45 am]

BILLING CODE 4310–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on March 8, 2018, 10:00 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session

1. Introductions and opening remarks by senior management.
2. Presentation on ''Streamlining Licensing.''
3. Presentation on ''Safeguarding the Bioeconomy: Challenges to Data Security, Health, and National Security.''
4. Open session report by regime representatives.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2, 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than March 1, 2018.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel,

formally determined on February 13, 2018, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2, 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2, 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2018–03421 Filed 2–16–18; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of: Irina Cvetkovic, Inmate Number: 28515–408, FCI Marianna, P.O. Box 7007, Marianna, FL 32447.

On April 26, 2017, in the U.S. District Court for the District of Arizona, Irina Cvetkovic (''Cvetkovic'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) (''AECA''). Specifically, Cvetkovic was convicted of knowingly and willfully exporting and causing to be exported from the United States to Hong Kong two Ruger model SR22 semi-automatic pistols, two silencers, and 1,000 rounds of ammunition, which are items designated as defense articles on the United States Munitions List, without the required U.S. Department of State licenses. Cvetkovic was sentenced to 10 months in prison, with credit for time served, one year of supervised release, and a $100 special assessment.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the EAA [Export Administration Act], the EAR, or any order, license, or authorization issued thereunder; any regulation, license or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)); or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the Export Administration Act (''EAA'' or ''the Act''), 50 U.S.C. 4610(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. 4610(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued pursuant to the Act or the Regulations in which the person had an interest at the time of his/her conviction.

BIS has received notice of Cvetkovic's conviction for violating Section 38 of the AECA, and has provided notice and an opportunity for Cvetkovic to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Cvetkovic.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Cvetkovic's export privileges under the Regulations for a period of 10 years from the date of Cvetkovic's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Cvetkovic had an interest at the time of her conviction.

Accordingly, it is hereby *ordered*:

First, from the date of this Order until April 26, 2027, Irina Cvetkovic, with a last known address of Inmate Number: 28515–408, FCI Marianna, P.O. Box 7007, Marianna, FL 32447, and when acting for or on her behalf, her successors, assigns, employees, agents or representatives (''the Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Cvetkovic by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2017). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*)) (''EAA'' or ''the Act''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2017 (82 FR 39005 (Aug. 16, 2017)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)).

the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Cvetkovic may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Cvetkovic and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until April 26, 2027.

Issued this 9th day of February 2018.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2018–03318 Filed 2–16–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on March 7, 2018, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Status reports by working group chairs.
3. Public comments and Proposals.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2, 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than February 28, 2018.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 13, 2018, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2, (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2, 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482·2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2018–03420 Filed 2–16–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–062]

Cast Iron Soil Pipe Fittings From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that cast iron soil pipe fittings from the People's Republic of China (China) were sold in the United States at less than fair value (LTFV) during the period of investigation (POI), January 1, 2017, through June 30, 2017.

DATES: Applicable February 20, 2018.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or Michael Bowen, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6478 or (202) 482–0768, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 8, 2017.[1] On November 27, 2017, Commerce postponed the preliminary determination of this investigation.[2] Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the preliminary determination of this investigation is now February 12, 2018.[3]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[4] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

[1] *See Cast Iron Soil Pipe Fittings from the People's Republic of China: Initiation of Less-Than-Fair Value Investigation,* 82 FR 37053 (August 8, 2017) (*Initiation Notice*).

[2] *See Cast Iron Soil Pipe Fittings from People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 82 FR 55989 (November 27, 2017).

[3] *See* Memorandum for the Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Cast Iron Soil Pipe Fittings from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Scope of the Investigation

The products covered by this investigation are cast iron soil pipe fittings from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[5] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).[6] The petitioner commented on the scope of the investigation as it appeared in the *Initiation Notice,* proposing the addition of certain Harmonized Tariff System (HTS) codes.[7] We are not preliminarily modifying the scope language as it appeared in the *Initiation Notice,* but we invite parties to comment on whether to add the proposed HTS codes to the scope language.[8]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated export prices and constructed export prices in accordance with sections 772(a) and (b) of the Act, respectively. Because China is a non-market economy within the meaning of section 771(18) of the Act, Commerce has calculated normal value in accordance with section 773(c) of the Act. Furthermore, pursuant to section 776(a) and (b) of the Act, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, for the China-wide entity. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances, in Part

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determines that critical circumstances exist with respect to imports of cast iron soil pipe fittings from China for mandatory respondent Sibo International Limited (Sibo), the non-individually examined respondents found to be eligible for a separate rate, and the China-wide entity, but do not exist for mandatory respondents Shanxi Xuanshi Industrial Group Co., Ltd. (Shanxi Xuanshi) and Wor-Biz International Trading Co., Ltd. (Anhui) (Wor-Biz). For a full description of the methodology and results of Commerce's analysis, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[9] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[10]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Shanxi Xuanshi Industrial Group Co., Ltd	Shanxi Xuanshi Industrial Group Co., Ltd.	68.37	68.28
Qinshui Shunshida Casting Co., Ltd	Sibo International Limited	109.95	109.79
Guang Zhou Premier & Pinan Foundry Co., Ltd./Botou Chenyuan Foundry Co., Ltd./Wuhu Best Machines Co., Ltd.	Wor-Biz Trading Co., Ltd. (Anhui)	78.86	78.63
Shijiazhuang Asia Casting Co., Ltd	Shijiazhuang Asia Casting Co., Ltd.	88.47	88.31
Qinshui Shunshida Casting Co., Ltd./Xinle Xinye Metal Products Co., Ltd.	Shanxi Zhongrui Tianyue Trading Co., Ltd.	88.47	88.31
Qinshui Shunshida Casting Co., Ltd./Xinle Rishuo Casting Factory/Shijiazhuang Shunjinguangao Trade Co., Ltd./Xinle Tang Rong Fa Lan Pan Co., Ltd.	Dalian Lino F.T.Z. Co., Ltd	88.47	88.31
Xinle City Zhile Pipeline Industry Co., Ltd./Qinshui Shunshida Casting Co., Ltd./Foshan City Deying Metal Products Co., Ltd.	Dinggin Hardware (Dalian) Co., Ltd.	88.47	88.31
Xinle Rishuo Casting Factory/Qinshui Shunshida Casting Co., Ltd	Dalian Metal I/E Co., Ltd	88.47	88.31
Qinshui County Xinwei Precision Co., Ltd	Qinshui Shunshida Casting Co., Ltd.	88.47	88.31
Shanxi Guruiwei Casting Co., Ltd	Richang Qiaoshan Trade Co., Ltd	88.47	88.31
Shijiazhuang Jingruisheng Metal Products Co., Ltd./Qinshui Shunshida Casting Co., Ltd./Xinle City Zhile Pipe Co., Ltd.	Hebei Metals & Engineering Products Trading Co., Ltd.	88.47	88.31
China-wide Entity		109.95	109.86

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as indicated in the chart above as follows: (1) For the producer/

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

[6] *See Initiation Notice*, 82 FR at 37053.

[7] *See* Letter from the petitioner, ''Cast Iron Soil Pipe Fittings from the People's Republic of China: Pre-Preliminary Comments,'' dated January 18, 2018.

[8] *See* the Preliminary Decision Memorandum for further discussion.

[9] *See Initiation Notice,* 82 FR at 37057.

[10] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Chinese producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-county exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination (or the China-wide entity) that supplied that third-country exporter.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of cast iron soil pipe fittings from China from the producer/exporter Sibo International Limited/Qinshui Shunshida Casting Co., Ltd., the non-individually examined respondents found to be eligible for a separate rate, and the China-wide entity. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies,[11] Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). Any such adjusted rates may be found in the Preliminary Determination Section's chart of estimated weighted-average dumping margins above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for the passed-through domestic subsidies or for export subsidies at the time the CVD provisional measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

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

Verification

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

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last final verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

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

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Between January 15, 2018, and January 25, 2018, pursuant to 19 CFR 351.210(b) and (e), Wor-Biz, Sibo, and Shanxi Xuanshi requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[13] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six

[11] *See* the Preliminary Decision Memorandum for further discussion.

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

[13] *See* Letters from Wor-Biz, ''Cast Iron Soil Pipe Fittings from the People's Republic of China: Request to Fully Extend the Final Results,'' dated January 18, 2018; Sibo, ''Cast Iron Soil Pipe Fittings from the People's Republic of China—Submission Seeking Extension of Final Determination and Provisional Measures,'' dated January 19, 2018; and Shanxi Xuanshi, ''Cast Iron Soil Pipe Fittings from the People's Republic of China (''Soil Pipe Fittings''); A–570–062; Request for Extension of Final Determination and Provisional Measures,'' dated January 25, 2018. The petitioner does not oppose postponement of the final determination. *See* Letter from the petitioner, ''Cast Iron Soil Pipe Fittings from the People's Republic of China: Request to Extend Final Determination,'' dated January 16, 2018.

months. Accordingly, Commerce's final determination will publish no later than 135 days after the publication of the preliminary determination notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: February 12, 2018.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is cast iron soil pipe fittings, finished and unfinished, regardless of industry or proprietary specifications, and regardless of size. Cast iron soil pipe fittings are nonmalleable iron castings of various designs and sizes, including, but not limited to, bends, tees, wyes, traps, drains, and other common or special fittings, with or without side inlets.

Cast iron soil pipe fittings are classified into two major types—hubless and hub and spigot. Hubless cast iron soil pipe fittings are manufactured without a hub, generally in compliance with Cast Iron Soil Pipe Institute (CISPI) specification 301 and/or American Society for Testing and Materials (ASTM) specification A888. Hub and spigot pipe fittings have hubs into which the spigot (plain end) of the pipe or fitting is inserted. Cast iron soil pipe fittings are generally distinguished from other types of nonmalleable cast iron fittings by the manner in which they are connected to cast iron soil pipe and other fittings.

The subject imports are normally classified in subheading 7307.11.0045 of the Harmonized Tariff Schedule of the United States (HTSUS): Cast fittings of nonmalleable cast iron for cast iron soil pipe. The HTSUS subheading and specifications are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination and Extension of Provisional Measures
V. Scope Comments
VI. Scope of the Investigation
VII. Discussion of the Methodology
A. Non-Market Economy Country
B. Surrogate Country and Surrogate Value Comments
C. Separate Rates
D. Affiliation
E. China-Wide Entity
F. Application of Facts Available and Adverse Inferences
G. Date of Sale
H. Comparisons to Fair Value
I. U.S. Price
J. Value-Added Tax (VAT)
K. Normal Value
L. Factor Valuation Methodology
VIII. Currency Conversion
IX. Adjustment Under Section 777(A)(F) of the Act
X. Critical Circumstances
XI. Adjustment for Countervailable Export Subsidies
XII. Verification
XIII. Conclusion

[FR Doc. 2018–03404 Filed 2–16–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–882, C–570–078, C–580–898, C–489–834]

Large Diameter Welded Pipe From India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Initiation of Countervailing Duty Investigations

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

DATES: Applicable February 9, 2018.

FOR FURTHER INFORMATION CONTACT: Robert Palmer at (202) 482–9068 (India), Jerry Huang at (202) 482–4047 (the People's Republic of China (China)), George Ayache at (202) 482–2623 (the Republic of Korea (Korea)), and Ajay Menon at (202) 482–1993 (the Republic of Turkey (Turkey)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On January 17, 2018, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) Petitions concerning imports of large diameter welded pipe (welded pipe) from China, India, Korea, and Turkey, filed in proper form on behalf of Berg Steel Pipe Corp., Dura-Bond Industries, Stupp Corporation, American Cast Iron Pipe Company, and Skyline Steel (collectively, the petitioners).[1] The CVD Petitions were accompanied by antidumping duty (AD) Petitions concerning imports of welded pipe from Canada, China, Greece, India, Korea, and Turkey. The petitioners are domestic producers of welded pipe.[2]

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the initiation of these investigations is now February 9, 2018.[3]

On January 23 and 26, 2018, Commerce requested supplemental information pertaining to certain aspects of the Petitions.[4] The petitioners filed responses to these requests on January 25, 26, and 29, 2018.[5] On February 5,

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[1] *See* Petitioners' letter, ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated January 17, 2018 (the Petitions).

[2] *Id.* at Volume I of the Petition at 2.

[3] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

[4] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping Duties on Imports of Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey and Countervailing Duties on Imports from India, the Republic of China, the Republic of Korea, and the Republic of Turkey: Supplemental Questions,'' (General Issues Supplemental Questionnaire); ''Petition for the Imposition of Countervailing Duties on Imports of Large Diameter Welded Pipe from India: Supplemental Questions;'' ''Petition for the Imposition of Countervailing Duties on Imports of Large Diameter Welded Pipe from the People's Republic of China: Supplemental Questions;'' ''Petition for the Imposition of Countervailing Duties on Imports of Large Diameter Welded Pipe from the Republic of Korea: Supplemental Questions;'' and ''Petition for the Imposition of Countervailing Duties on Imports of Large Diameter Welded Pipe from the Republic of Turkey: Supplemental Questions.'' All of these documents are dated January 23, 2018. *See also* Commerce's Letter, ''Petition for the Imposition of Countervailing Duties on Imports of Large Diameter Welded Pipe from the Republic of Turkey: Supplemental Questions,'' dated January 26, 2018.

[5] *See* Petitioners' Letters, ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 23, 2018 Supplemental Questions Regarding Volume IX of the Petition for the Imposition of Antidumping and Countervailing

2018, the petitioners submitted certain revisions to the scope.[6]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that the Governments of China, India, Korea, and Turkey (GOC, GOI, GOK, and GOT, respectively) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of welded pipe in China, India, Korea, and Turkey, and imports of such products are materially injuring, or threatening material injury to, the domestic welded pipe industry in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support necessary for the initiation of the requested CVD investigations.[7]

Period of Investigation

Because the Petitions were filed on January 17, 2018, the period of investigation for each of the investigations is January 1, 2017, through December 31, 2017.

Scope of the Investigations

The product covered by these investigations is large diameter welded pipe from China, India, Korea, and Turkey. For a full description of the scope of these investigations, *see* the Appendix to this notice.

Comments on Scope of the Investigations

During our review of the Petitions, Commerce issued questions to, and received responses from, the petitioners pertaining to the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[8] As a result of these exchanges, the scope of the Petitions was modified to clarify the description of merchandise covered by the Petitions. The description of the merchandise covered by this initiation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the Preamble to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[9] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[10] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on March 1, 2018, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on March 12, 2018, which is the next business day after 10 calendar days from the initial comments deadline.[11]

Commerce requests that any factual information parties consider relevant to the scope of the investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of each of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[12] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the GOC, GOI, GOK, and GOT of the receipt of the Petitions, and provided them the opportunity for consultations with respect to the CVD Petitions.[13] Consultations were held

Duties;'' ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 23, 2018 Supplemental Questions Regarding Volume V of the Petition for the Imposition of Antidumping and Countervailing Duties;'' ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 23, 2018 Supplemental Questions Regarding Volume VII of the Petition for the Imposition of Antidumping and Countervailing Duties;'' and ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 23, 2018 Supplemental Questions Regarding Volume XI of the Petition for the Imposition of Antidumping and Countervailing Duties.'' All of these documents are dated January 25, 2018. *See also* Petitioners' Letter, ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 23, 2018 Supplemental Questions Regarding Volume I of the Petition for the Imposition of Antidumping and Countervailing Duties,'' dated January 26, 2018 (General Issues Supplement). *See also* Petitioners' Letter, ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 26, 2018 Supplemental Questions Regarding Volume XI of the Petition for the Imposition of Antidumping and Countervailing Duties,'' dated January 29, 2018.

[6] *See* Memorandum, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Phone Call with Counsel to the Petitioners,'' dated February 1, 2018; *see also* Petitioners' Letter, ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Petition Supplement on Scope and Industry Support,'' dated February 5, 2018 (Scope and Industry Support Supplement).

[7] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

[8] *See* General Issues Supplemental Questionnaire, at 4–5.

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

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[11] *See* 19 CFR 351.303(b).

[12] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). *See also Enforcement and Compliance: Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx*, and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[13] *See* Letter from Paul Walker, Program Manager, Office V, to the Embassy of China ''Countervailing Duty Petition on Large Diameter Welded Pipe from the People's Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated January 29, 2018; Letter from Kathleen Marksberry, Program Manager, Office VIII, to the Embassy of India ''Countervailing Duty Petition on Large Diameter Welded Pipe from India: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated January 17, 2018; Letter from Kathleen Marksberry, Program Manager, Office VIII, to the Embassy of the Republic of Korea ''Countervailing Duty Petition on Large

Continued

with the GOI on February 2, 2018; with the GOK on January 26, 2018; and with the GOT on January 30, 2018.[14] The GOC did not request consultations.

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[15] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[16]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.[17] Based on our analysis of the information submitted on the record, we have determined that welded pipe, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[18]

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the Appendix to this notice. The petitioners provided their own 2017 shipments of the domestic like product and 2017 shipments by supporters of the petitions.[19] The petitioners compared the total quantity of these shipments to the estimated total shipments of the domestic like product for the entire domestic industry.[20] The petitioners explained that they relied on shipment data because production data for the entire domestic industry are not available.[21] In addition, the petitioners provided a comparison of their own production and shipment data to demonstrate that shipments are a reasonable proxy for data on production of welded pipe.[22] We relied on data the petitioners provided for purposes of measuring industry support.[23]

Our review of the data provided in the Petitions, General Issues Supplement, Industry Support Supplement, Scope and Industry Support Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.[24] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[25] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[26] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[27] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry

Diameter Welded Pipe from the Republic of Korea,'' dated January 17, 2018; and Letter from Melissa Skinner, Director, Office II to the Embassy of the Republic of Turkey ''Large Diameter Welded Pipe from the Republic of Turkey: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated January 18, 2018.

[14] *See* Memorandum, ''Consultations with Officials from the Government of India Regarding the Countervailing Duty Petition on Large Diameter Welded Pipe from India,'' dated February 7, 2018; Memorandum, ''Consultations with Government Officials from the Republic of Korea on the Countervailing Duty Petition Regarding Large Diameter Welded Pipe from the Republic of Korea,'' dated February 1, 2018; and Memorandum, ''Countervailing Duty Petition Regarding Large Diameter Welded Pipe from the Republic of Turkey: Consultations with Government of Turkey,'' dated January 30, 2018.

[15] *See* section 771(10) of the Act.

[16] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[17] *See* Volume I of the Petitions, at 15; *see also* General Issues Supplement, at 7–10.

[18] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Large Diameter Welded Pipe from India (India CVD Initiation Checklist), at Attachment II; Countervailing Duty Investigation Initiation Checklist: Large Diameter Welded Pipe from the People's Republic of China (China CVD Initiation Checklist), at Attachment II; Countervailing Duty Investigation Initiation Checklist: Large Diameter Welded Pipe from the Republic of Korea (Korea CVD Initiation Checklist), at Attachment II; and Countervailing Duty Investigation Initiation Checklist: Large Diameter Welded Pipe from the Republic of Turkey (Turkey CVD Initiation Checklist), at Attachment II. These checklists are dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[19] *See* Volume I of the Petitions, at 4 and Exhibit I–4; *see also* letter from the petitioners to Commerce dated January 31, 2018, ''Supplement to the Petitions for the Imposition of Antidumping and Countervailing Duties: Industry Support'' (Industry Support Supplement), at 2–3 and Exhibit I–Supp2–1; *see also* Scope and Industry Support Supplement, at Exhibit I–Supp. 3–3.

[20] *Id.*

[21] *See* Industry Support Supplement, at 3.

[22] *Id.,* at 3 and Exhibits I–Supp–2–1 and I–Supp2–2.

[23] *Id.* For further discussion, *see* Attachment II of the China CVD Initiation Checklist, India CVD Initiation Checklist, Korea CVD Initiation Checklist, and Turkey CVD Initiation Checklist.

[24] *Id.*

[25] *Id.; see also* section 702(c)(4)(D) of the Act.

[26] *See* Attachment II of the China CVD Initiation Checklist, India CVD Initiation Checklist, Korea CVD Initiation Checklist, and Turkey CVD Initiation Checklist.

[27] *Id.*

within the meaning of section 702(b)(1) of the Act.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the CVD investigations that they are requesting that Commerce initiate.[28]

In letters dated January 25, January 29, and February 5, 2018, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. (collectively, Borusan), a Turkish producer and exporter, submitted comments on industry support. The petitioners responded to these comments in the Scope and Industry Support Supplement, dated February 5, 2018. For further discussion of these comments, see Attachment II of the China CVD Initiation Checklist, India CVD Initiation Checklist, Korea CVD Initiation Checklist, and Turkey CVD Initiation Checklist.

Injury Test

Because India, China, Korea, and Turkey are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India, China, Korea, and Turkey materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[29] In CVD petitions, section 771(24)(B) of the Act provides that imports of subject merchandise from developing and least developed countries must exceed the negligibility threshold of four percent. The petitioners have adequately demonstrated that subject imports from India, which has been designated as a least developed country under section 771(36)(B) of the Act, exceeded the negligibility threshold of four percent during the period of investigation.[30]

The petitioners contend that the industry's injured condition is illustrated by a significant volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; and a negative impact on the domestic industry's U.S. shipments, capacity utilization, production, and financial performance.[31] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[32]

Initiation of CVD Investigations

Based on the examination of the Petitions, we find that the Petitions meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of welded pipe from China, India, Korea, and Turkey benefit from countervailable subsidies conferred by the GOC, GOI, GOK, and GOT, respectively. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of this initiation.

Numerous amendments to the AD and CVD laws were made pursuant to the Trade Preferences Extension Act of 2015.[33] The amendments to sections 776 and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to these CVD investigations.[34]

China

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 27 of the 28 alleged programs, and to partially initiate on the 28th program. For a full discussion of the basis for our decision to initiate on each program, *see* China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

India

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 70 of the 72 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* India CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Korea

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 20 of the 21 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* Korea CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Turkey

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on all 15 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* Turkey CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

The petitioners named 157 companies in China,[35] 26 companies in India,[36] 28 companies in Korea,[37] and 13 companies in Turkey,[38] as producers/exporters of welded pipe. Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in these investigations. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources,

[28] *Id.*

[29] *See* Volume I of the Petitions, at 26–27 and Exhibit I–11; *see also* General Issues Supplement, at 15–18 and Exhibits I–Supp–10 and I–Supp–11.

[30] *Id.*

[31] *Id.,* at 13–15, 18–43 and Exhibits I–5 and I–8 through I–18; *see also* General Issues Supplement, at 1, 15–18 and Exhibits I–Supp–1, I–Supp–2, I–Supp–10 and I–Supp–11.

[32] *See* China CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey (Attachment III); *see also* India CVD Initiation Checklist, at Attachment III; *see also* Korea CVD Initiation Checklist, at Attachment III; *see also* Turkey CVD Initiation Checklist, at Attachment III.

[33] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015). *See also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[34] *See Applicability Notice,* 80 FR at 46794–95.

[35] *See* General Issues and China AD Supplement, at Exhibit I–Supp–4.

[36] *See* the Petitions at Exhibit I–3.

[37] *Id.*

[38] *Id.*

where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of welded pipe from China, India, Korea, and Turkey during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigation,'' in the Appendix.

On February 1, 2018 (for India and Korea), February 2, 2018 (for China), and February 6, 2018 (for Turkey), Commerce released CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of these CVD investigations.[39] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce's website at *http://enforcement.trade.gov/apo*.

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petitions have been provided to the GOC, GOI, GOK, and GOT *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

[39] *See* Memorandum, ''Large Diameter Welded Pipe from India Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection,'' dated February 1, 2018; Memorandum, ''Large Diameter Welded Pipe from the Republic of Korea Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection,'' dated February 1, 2018; Memorandum, ''Large Diameter Welded Pipe from the People's Republic of China Releasing U.S. Customs and Border Protection Data,'' dated February 2, 2018; and Memorandum, ''Large Diameter Welded Pipe from the Republic of Turkey Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection,'' dated February 6, 2018.

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of welded pipe from China, India, Korea, and Turkey are materially injuring, or threatening material injury to, a U.S. industry.[40] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[41] Otherwise, these investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[42] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[43] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

[40] *See* section 703(a)(2) of the Act.

[41] *See* section 703(a)(1) of the Act.

[42] *See* 19 CFR 351.301(b).

[43] *See* 19 CFR 351.301(b)(2).

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[44] Parties must use the certification formats provided in 19 CFR 351.303(g).[45] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

[44] *See* section 782(b) of the Act.

[45] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*''); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

Dated: February 9, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

Scope of the Investigations

The merchandise covered by these investigations is welded carbon and alloy steel pipe, more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Large diameter welded pipe may be used to transport oil, gas, slurry, steam, or other fluids, liquids, or gases. It may also be used for structural purposes, including, but not limited to, piling. Specifically, not included is large diameter welded pipe produced only to specifications of the American Water Works Association (AWWA) for water and sewage pipe.

Large diameter welded pipe used to transport oil, gas, or natural gas liquids is normally produced to the American Petroleum Institute (API) specification 5L. Large diameter welded pipe may also be produced to American Society for Testing and Materials (ASTM) standards A500, A252, or A53, or other relevant domestic specifications, grades and/or standards. Large diameter welded pipe can be produced to comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards, or can be non-graded material. All pipe meeting the physical description set forth above is covered by the scope of these investigations, whether or not produced according to a particular standard.

Subject merchandise also includes large diameter welded pipe that has been further processed in a third country, including but not limited to coating, painting, notching, beveling, cutting, punching, welding, or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the in-scope large diameter welded pipe.

Excluded from the scope are any products covered by the existing antidumping duty orders on welded line pipe from the Republic of Korea, welded line pipe from the Republic of Turkey, and welded ASTM A–312 stainless steel pipe from Korea, as well as any products covered by the existing countervailing duty order on welded line pipe from Turkey. *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056 (December 1, 2015); *Welded ASTM A–312 Stainless Steel Pipe from South Korea: Antidumping Duty Order,* 57 FR 62300 (December 30, 1992); and *Welded Line Pipe from the Republic of Turkey: Countervailing Duty Order,* 80 FR 75054 (December 1, 2015).

The large diameter welded pipe that is subject to these investigations is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, 7305.19.5000, 7305.31.4000, 7305.31.6010, 7305.31.6090, 7305.39.1000 and 7305.39.5000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

[FR Doc. 2018–03304 Filed 2–16–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

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

SUMMARY: The Department of Commerce (Commerce) is notifying the public that the Court of International Trade's (CIT or the Court) final judgment in this case is not in harmony with Commerce's final scope ruling and is, therefore, finding that certain black, circular tubing produced to ASTM A–513 specifications by Maquilacero S.A. de C.V. (Maquilacero) is not within the scope of the antidumping duty order on circular welded non-alloy steel pipe from Mexico.

DATES: Applicable Date: February 19, 2018.

FOR FURTHER INFORMATION CONTACT: Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6312.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 2015, Commerce issued the Maquilacero Scope Ruling,[1] in which it determined, under 19 CFR 351.225(k)(1), that 46 products produced by Maquilacero to specification A–513 did not meet the exclusion for ''mechanical tubing'' in the scope of the *Order,*[2] and were, therefore, within the scope of the *Order*. In particular, Commerce relied upon a prior scope ruling pertaining to certain mechanical tubing products produced by Productos Laminados de Monterrey, S.A. de C.V., and Prolamsa, Inc. (Prolamsa), which was conducted under 19 CFR 351.225(k)(2), and which defined ''mechanical tubing'' as tubing that met a variety of physical, chemical, and mechanical characteristics, and was stenciled.[3] Commerce found that Maquilacero's tubing was not stenciled, and, thus, was not ''mechanical tubing.''[4] Maquilacero challenged Commerce's final scope ruling before the CIT.

On August 30, 2017, the Court remanded the Maquilacero Scope Ruling to Commerce.[5] Specifically, the Court held that Commerce did not ''properly consider how the mention of stenciling came to be found in the ruling excluding Prolamsa's pipe from the Order,'' particularly given that stenciling ''does not change the inherent quality or the intended use of the product.''[6] As such, the Court concluded that ''the imposition of a requirement {(*i.e.,* stenciling)} having nothing to do with the physical characteristics of mechanical tubing and that appeared in the Prolamsa Final Scope Ruling by chance { } was unreasonable.''[7] Thus, the Court found ''that Commerce's ruling unlawfully expanded the scope of the Order to include {Maquilacero}'s merchandise,''[8] and remanded the Final Scope Ruling to Commerce to ''(1) not impose a stenciling requirement, and (2) find that Maquilacero's tubing is excluded from the *Order* based on its analysis found on pages 6–9 of the Final Scope Ruling.''[9] In particular, the Court instructed Commerce to ''find plaintiff's products are excluded from the *Order* using the same analysis in the Final Scope Ruling and that is found in this opinion.''[10]

Pursuant to the Court's instructions, Commerce issued the Final Remand

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[1] *See* Memorandum, ''Final Scope Ruling on Certain Black, Circular Tubing Produced to ASTM A–513 Specifications by Maquilacero S.A. de C.V.,'' dated July 27, 2015 (Maquilacero Scope Ruling).

[2] *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992) (the *Order*).

[3] *See* Memorandum, ''Final Scope Ruling on Certain Black, Circular Tubing Produced to ASTM A–513 Specifications by Productos Laminados de Monterrey, S.A. de C.V., and Prolamsa, Inc.,'' dated January 12, 2015 (Prolamsa Final Scope Ruling).

[4] *See* Maquilacero Scope Ruling.

[5] *See Maquilacero S.A. de C.V.* v. *United States,* Slip Op. 17–117, Court No. 15–00287 (CIT 2017).

[6] *See Maquilacero,* Slip Op. 17–117, at 29.

[7] *See Maquilacero,* Slip Op. 17–117, at 32.

[8] *Id.,* at 26.

[9] *See Maquilacero,* Slip Op. 17–117, at 32–33.

[10] *Id.,* at 33.

Results.[11] Consistent with the Court's instructions, Commerce found that the 46 products included in Maquilacero's scope ruling request are excluded from the *Order,* because those products meet all physical, chemical, and mechanical properties of mechanical tubing, notwithstanding that the products are not stenciled. On February 9, 2018, the Court sustained Commerce's Final Remand Results in their entirety.[12]

Timken Notice

In its decision in *Timken,*[13] as clarified by *Diamond Sawblades,*[14] the United States Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to sections 516A(c) and (e) of the Act, Commerce must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's February 9, 2018, judgment in *Maquilacero,* sustaining Commerce's decision in the Final Remand Results that the 46 products included in Maquilacero's scope ruling request are excluded from the *Order* constitutes a final decision of the court that is not in harmony with the Maquilacero Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, Commerce will continue the suspension of liquidation of the 46 products at issue pending expiration of the period to appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Scope Ruling

Because there is now a final court decision with respect to the Maquilacero Scope Ruling, Commerce is amending its final scope ruling. Commerce finds that the scope of the *Order* does not cover the products addressed in the Maquilacero Scope Ruling. Commerce will instruct U.S. Customs and Border Protection (CBP) that the cash deposit rate will be zero percent for the 46 products subject to Maquilacero's scope ruling request. In the event that the CIT's ruling is not appealed, or if appealed, upheld by the CAFC, Commerce will instruct CBP to liquidate entries of the 46 products at issue without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: February 13, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–03375 Filed 2–16–18; 8:45 am]

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[11] *See* Final Results of Redetermination Pursuant to Remand in *Maquilacero S.A. de C.V.* v. *United States,* Ct. No. 15–00287, November 27, 2017 (Final Remand Results).

[12] *See Maquilacero S.A. de C.V.* v. *United States,* Slip Op. 18–8, Court No. 15–00287 (CIT 2018).

[13] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), at 341.

[14] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 20 10) (*Diamond Sawblades*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–863, A–484–803, A–533–881, A–570–077, A–580–897, A–489–833]

Large Diameter Welded Pipe From Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations

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

DATES: Applicable February 9, 2018.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit at (202) 482–4031 (Canada); Brittany Bauer at (202) 482–3860 (Greece); Jaron Moore at (202) 482–3640 (India); Kabir Archuletta at (202) 482–8024 (the People's Republic of China (China)); Jesus Saenz at (202) 482–8184 (the Republic of Korea (Korea)); and Rebecca Janz at (202) 482–2972 (the Republic of Turkey (Turkey)); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On January 17, 2018, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) Petitions concerning imports of large diameter welded pipe (welded pipe) from Canada, China, Greece, India, Korea, and Turkey, filed in proper form on behalf of American Cast Iron Pipe Company, Berg Steel Pipe Corp., Dura-Bond Industries, Skyline Steel, and Stupp Corporation (collectively, the petitioners).[1] The AD Petitions were accompanied by countervailing duty (CVD) Petitions concerning imports of welded pipe from China, India, Korea, and Turkey. The petitioners are domestic producers of welded pipe.[2]

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the initiation of these investigations is now February 9, 2018.[3]

On January 23, 24, 29, 30, and February 6, 2018, Commerce requested supplemental information pertaining to certain areas of the Petitions.[4] The

[1] *See* Petitioners' Letter, ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated January 17, 2018 (the Petitions).

[2] *See* Volume I of the Petitions, at 2.

[3] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[4] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping Duties on Imports of Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey and Countervailing Duties on Imports from India, the Republic of China, the Republic of Korea, and the Republic of Turkey: Supplemental Questions,'' (General Issues Supplemental Questionnaire); ''Petition for the Imposition of Antidumping Duties on Imports of Large Diameter Welded Pipe from {Canada}{sic}: Supplemental Questions;'' ''Petition for the Imposition of Antidumping Duties on Imports of Large Diameter Welded Pipe from the People's Republic of China: Supplemental Questions;'' ''Petition for the Imposition of Antidumping Duties on Imports of Large Diameter Welded Pipe from Greece: Supplemental Questions;'' and ''Petition for the Imposition of Antidumping Duties on Imports of Large Diameter Welded Pipe from Turkey: Supplemental Questions.'' All of these documents are dated January 23, 2018. *See also* Commerce's Letters, ''Petition for the Imposition of Antidumping Duties on Imports of Large Diameter Welded Pipe from India: Supplemental Questions;'' and ''Petition for the Imposition of Antidumping Duties on Imports of Large Diameter Welded Pipe from the Republic of Korea: Supplemental Questions,'' both dated January 24, 2018. *See also* Commerce's Letter, ''Petition for the Imposition of Antidumping Duties on Imports of Large Diameter Welded Pipe from the People's Republic of China: Supplemental Questions,'' dated January 29, 2018. *See also* ''Petition for the Imposition of Antidumping Duties on Imports of Large Diameter Welded Pipe from Greece: Additional Questions;'' ''Petition for the Imposition of Antidumping Duties on Imports of Large Diameter Welded Pipe from India: Additional Questions;'' ''Petition for the Imposition of Antidumping Duties on Imports of Large Diameter Welded Pipe from Korea: Additional Questions;'' and ''Petition for the Imposition of Antidumping Duties on Imports of Large Diameter Welded Pipe from Turkey: Additional Questions.'' These

petitioners filed responses to these requests on January 25, 26, 29, and 30, and February 1, 5, and 6, 2018.[5] Also on February 5, 2018, the petitioners submitted certain revisions to the scope.[6]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of welded pipe from Canada, China, Greece, India, Korea, and Turkey are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing welded pipe in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support with respect to the initiation of the AD investigations that the petitioners are requesting.[7]

Periods of Investigation

Because the Petitions were filed on January 17, 2018, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the Canada, Greece, India, Korea, and Turkey investigations is January 1, 2017, through December 31, 2017. Because China is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the POI for the China investigation is July 1, 2017, through December 31, 2017.

Scope of the Investigations

The product covered by these investigations is welded pipe from Canada, China, Greece, India, Korea, and Turkey. For a full description of the scope of these investigations, *see* the Appendix to this notice.

Scope Comments

During our review of the Petitions, Commerce issued questions to, and received responses from, the petitioners pertaining to the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[8] As a result of these exchanges, the scope of the Petitions was modified to clarify the description of merchandise covered by the Petitions. The description of the merchandise covered by this initiation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the preamble to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[9] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[10] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on March 1, 2018, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on March 12, 2018, which is the next business day after 10

documents are all dated January 30, 2018. *See also* Commerce's Memorandum to the File, ''Telephone Call with Petitioner's Counsel Regarding U.S. Price Calculation,'' dated February 6, 2018.

[5] *See* Petitioners' Letters, ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 23, 2018 Supplemental Questions Regarding Volume VIII of the Petition for the Imposition of Antidumping and Countervailing Duties,'' dated January 25, 2018 (China AD Supplement). *See also* Petitioners' Letters, ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 23, 2018 Supplemental Questions Regarding Volume I of the Petition for the Imposition of Antidumping and Countervailing Duties'' (General Issues Supplement); ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 23, 2018 Supplemental Questions Regarding Volume II of the Petition for the Imposition of Antidumping and Countervailing Duties'' (Canada AD Supplement); ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 23, 2018 Supplemental Questions Regarding Volume III of the Petition for the Imposition of Antidumping and Countervailing Duties'' (Greece AD Supplement); and ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 23, 2018 Supplemental Questions Regarding Volume X of the Petition for the Imposition of Antidumping and Countervailing Duties'' (Turkey AD Supplement). All of these documents are dated January 26, 2018. *See also* Petitioners' Letters, ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 24, 2018 Supplemental Questions Regarding Volume IV of the Petition for the Imposition of Antidumping and Countervailing Duties'' (India AD Supplement); and ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 24, 2018 Supplemental Questions Regarding Volume VI of the Petition for the Imposition of Antidumping and Countervailing Duties'' (Korea AD Supplement), both dated January 29, 2018. *See also* Petitioners' Letter, ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 29, 2018 Supplemental Questions Regarding Volume VIII of the Petition for the Imposition of Antidumping and Countervailing Duties,'' dated January 29, 2018 (Second China AD Supplement). *See also* Petitioners' Letters, ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 30, 2018 Supplemental Questions Regarding Volume III of the Petition for the Imposition of Antidumping and Countervailing Duties;'' ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 30, 2018 Additional Questions Regarding Volume IV of the Petition for the Imposition of Antidumping and Countervailing Duties'' (Second India AD Supplement); ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 30, 2018 Additional Questions Regarding Volume VI of the Petition for the Imposition of Antidumping and Countervailing Duties'' (Second Korea AD Supplement); and ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 30, 2018 Supplemental Questions Regarding Volume X of the Petition for the Imposition of Antidumping and Countervailing Duties'' (Second Turkey AD Supplement). All of these documents are dated February 1, 2018. *See also* Petitioners' Letter, ''Large Diameter Welded Pipe from Greece: Supplement to the Petitions for the Imposition of Antidumping and Countervailing Duties'' (Second Greece AD Supplement), dated February 5, 2018. *See also* Petitioners' Letters, ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Submission of Declaration regarding Vol. III of the Petition on Antidumping and Countervailing Duties;'' and ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Clarification of Vol. IV India Dumping Margin,'' (Third India AD Supplement). Both of these documents are dated February 6, 2018.

[6] *See* Memorandum, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Phone Call with Counsel to the Petitioners,'' dated February 1, 2018; *see also* Petitioners' Letter, ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Petition Supplement on Scope and Industry Support,'' dated February 5, 2018 (Scope and Industry Support Supplement).

[7] *See* the ''Determination of Industry Support for the Petitions'' section, *infra.*

[8] *See* General Issues Supplemental Questionnaire, at 4–5.

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

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

calendar days from the initial comments deadline.[11]

Commerce requests that any factual information parties consider relevant to the scope of the investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of each of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[12] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

Commerce will provide interested parties an opportunity to comment on the appropriate physical characteristics of welded pipe to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics, and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe welded pipe, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on March 1, 2018. Any rebuttal comments must be filed by 5:00 p.m. ET on March 12, 2018. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the records of the Canada, China, Greece, India, Korea, and Turkey less-than-fair-value investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[13] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[14]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the Petitions.[15] Based on our analysis of the information submitted on the record, we have determined that welded pipe, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[16]

[11] *See* 19 CFR 351.303(b).

[12] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[13] *See* section 771(10) of the Act.

[14] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[15] *See* Volume I of the Petitions, at 15; *see also* General Issues Supplement, at 7–10.

[16] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklist: Large Diameter Welded Pipe from Canada (Canada AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Large Diameter Welded Pipe from Greece (Greece AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Large Diameter Welded Pipe from India (India AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Large Diameter Welded Pipe from the People's Republic of China (China AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Large Diameter Welded Pipe from the Republic of Korea (Korea AD Initiation Checklist), at Attachment II; and Antidumping Duty Investigation Initiation Checklist: Large Diameter Welded Pipe from the Republic of Turkey (Turkey AD Initiation Checklist), at Attachment II. These

In determining whether the petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the Appendix to this notice. The petitioners provided their own 2017 shipments of the domestic like product and 2017 shipments by supporters of the petitions.[17] The petitioners compared the total quantity of these shipments to the estimated total shipments of the domestic like product for the entire domestic industry.[18] The petitioners explained that they relied on shipment data because production data for the entire domestic industry are not available.[19] In addition, the petitioners provided a comparison of their own production and shipment data to demonstrate that shipments are a reasonable proxy for data on production of welded pipe.[20] We relied on data the petitioners provided for purposes of measuring industry support.[21]

Our review of the data provided in the Petitions, General Issues Supplement, Industry Support Supplement, Scope and Industry Support Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.[22] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[23] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[24] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[25] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the AD investigations that they are requesting that Commerce initiate.[26]

In letters dated January 25, January 29, and February 5, 2018, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. (collectively, Borusan), a Turkish producer and exporter, submitted comments on industry support.[27] The petitioners responded to these comments in the Scope and Industry Support Supplement, dated February 5, 2018. For further discussion of these comments, *see* Attachment II of the Canada AD Initiation Checklist, China AD Initiation Checklist, Greece AD Initiation Checklist, India AD Initiation Checklist, Korea AD Initiation Checklist, and Turkey AD Initiation Checklist.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[28]

The petitioners contend that the industry's injured condition is illustrated by a significant volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; and a negative impact on the domestic industry's U.S. shipments, capacity utilization, production, and financial performance.[29] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[30]

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which Commerce based its decision to initiate AD investigations of imports of welded pipe from Canada, China, Greece, India, Korea, and Turkey. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the country-specific initiation checklists.

Export Price

For Korea and Turkey, the petitioners based export price (EP) on price quotes for sales of welded pipe produced in, and exported from, those countries and offered for sale in the United States.[31] For China, the petitioners based EP on the average unit values (AUVs) of publicly available import data.[32] For China, the petitioners also used data regarding sales exported by a Chinese producer of welded pipe to support EP.[33] For Canada and India, the

checklists are dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[17] *See* Volume I of the Petitions, at 4 and Exhibit I–4; *see also* letter from the petitioners to Commerce dated January 31, 2018, ''Supplement to the Petitions for the Imposition of Antidumping and Countervailing Duties: Industry Support'' (Industry Support Supplement), at 2–3 and Exhibit I–Supp2–1; *see also* Scope and Industry Support Supplement, at Exhibit I–Supp3–3.

[18] *Id.*

[19] *See* Industry Support Supplement, at 3.

[20] *Id.* at 3 and Exhibits I–Supp–2–1 and I–Supp2–2.

[21] *Id.* For further discussion, *see* Attachment II of the Canada AD Initiation Checklist, China AD Initiation Checklist, Greece AD Initiation Checklist, India AD Initiation Checklist, Korea AD Initiation Checklist, and Turkey AD Initiation Checklist.

[22] *Id.*

[23] *Id.; see also* section 732(c)(4)(D) of the Act.

[24] *See* Attachment II of the Canada AD Initiation Checklist, China AD Initiation Checklist, Greece AD Initiation Checklist, India AD Initiation Checklist, Korea AD Initiation Checklist, and Turkey AD Initiation Checklist.

[25] *Id.*

[26] *Id.*

[27] *See* letter from Borusan to Commerce dated January 25, 2018, ''Comments on Industry Support,'' letter from Borusan to Commerce dated January 29, 2018, ''Additional Comments on Industry Support,'' and letter from Borusan to Commerce dated February 5, 2018, ''Additional Comments on Industry Support.''

[28] *See* Volume I of the Petitions, at 26–27 and Exhibit I–11; *see also* General Issues Supplement, at 15–18 and Exhibits I–Supp–10 and I–Supp–11.

[29] *Id.,* at 13–15, 18–43 and Exhibits I–5 and I–8 through I–18; *see also* General Issues Supplement, at 1, 15–18 and Exhibits I–Supp–1, I–Supp–2, I–Supp–10 and I–Supp–11.

[30] *See* Canada AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey (Attachment III); *see also* China AD Initiation Checklist, at Attachment III; *see also* Greece AD Initiation Checklist, at Attachment III; *see also* India AD Initiation Checklist, at Attachment III; *see also* Korea AD Initiation Checklist, at Attachment III; *see also* Turkey AD Initiation Checklist, at Attachment III.

[31] *See* Korea and Turkey AD Initiation Checklists.

[32] *See* China AD Initiation Checklist.

[33] *Id.*

petitioners based EP on sales offers for welded pipe produced in, and exported from, those countries, valued using AUVs of publicly available import data.[34] Where applicable, the petitioners made deductions from U.S. price for movement and other expenses, consistent with the terms of sale.[35]

Constructed Export Price

For Greece, because the petitioners had reason to believe the sale was made through a U.S. affiliate, petitioners based constructed export price (CEP) on an offer for sale of welded pipe produced in, and exported from, Greece and offered for sale in the United States.[36] The petitioners made deductions from U.S. price for movement expenses consistent with the delivery terms.[37] Where applicable, the petitioners also deducted CEP selling expenses from U.S. price.[38]

Normal Value

For Canada, Greece, India, Korea, and Turkey, the petitioners were unable to obtain reliable information relating to the prices charged for welded pipe in Canada, Greece, India, Korea, and Turkey, or any third country market.[39] Because home market and third country prices were not reasonably available, the petitioners calculated NV based on constructed value (CV). For further discussion of CV, *see* the section ''Normal Value Based on Constructed Value'' below.[40]

With respect to China, Commerce considers China to be an NME country.[41] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of this investigation. Accordingly, NV in China is appropriately based on factors of production (FOPs) valued in a surrogate market economy country, in accordance with section 773(c) of the Act.[42] In the course of this investigation, all parties, and the public, will have the opportunity to provide relevant information related to the granting of separate rates to individual exporters.

The petitioners claim that Thailand is an appropriate surrogate country for China because it is a market economy country that is at a level of economic development comparable to that of China and it is a significant producer of comparable merchandise that is home to several producers of welded pipe.[43] The petitioners provided publicly-available information from Thailand to value all FOPs.[44] However, the petitioners relied upon the financial statements of Ternium, S.A., a Mexican producer of welded pipe, to value financial ratios because: (1) Mexico is also a country found by Commerce to be economically comparable to China; and (2) all of the Thai producers of welded pipe that the petitioners identified are either privately held and do not publish publicly-available financial statements or do publish financial statements but those statements indicate that the companies operated at a loss during the POI.[45] Therefore, based on the information provided by the petitioners, we determine that it is appropriate to use Thailand as the primary surrogate country, but rely on the financial statements of a Mexican producer of welded pipe to value financial ratios, for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

Because information regarding the volume of inputs consumed by Chinese producers/exporters was not reasonably available, the petitioners used the product-specific consumption rates of a U.S. welded pipe producer to estimate the Chinese manufacturers' FOPs.[46] The petitioners valued the estimated FOPs using surrogate values from Thailand, as noted above.[47] The petitioners used the average POI exchange rate to convert the data to U.S. dollars.[48]

Normal Value Based on Constructed Value

As noted above, the petitioners were unable to obtain information relating to the prices charged for welded pipe in Canada, Greece, India, Korea, and Turkey, or any third country market; accordingly, the petitioner based NV on CV.[49] Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (COM), selling, general, and administrative (SG&A) expenses, financial expenses, packing expenses, and profit. For Canada, Greece, India, Korea, and Turkey, the petitioners calculated the COM based on the input factors of production and usage rates from a U.S. producer of welded pipe. The input factors of production were valued using publicly available data on costs specific to Canada, Greece, India, Korea, and Turkey, during the proposed POI.[50] Specifically, the prices for raw materials, reclaimed steel scrap, and packing inputs were valued using publicly available import and domestic price data for Canada, Greece, India, Korea, and Turkey.[51] Labor and energy costs were valued using publicly available sources for Canada, Greece, India, Korea, and Turkey.[52] The petitioners calculated factory overhead, SG&A, and profit for Canada, Greece, India, and Turkey based on the average ratios found in the experience of a producer of welded pipe products or of comparable merchandise from each of these countries.[53] Because the petitioners were not able to ascertain the fixed overhead rate of a Korean producer of welded pipe, the petitioners, conservatively, omitted fixed overhead costs in the calculation of COM for Korea.[54] The petitioners calculated SG&A and profit for Korea based on the average ratios found in the

[34] *See* Canada and India AD Initiation Checklists.

[35] *See* Canada, China, India, Korea, and Turkey Initiation Checklists.

[36] *See* Greece Initiation Checklist.

[37] *Id.*

[38] *Id.*

[39] *See* Canada, Greece, India, Korea, and Turkey AD Initiation Checklists.

[40] In accordance with section 505(a) of the Trade Preferences Extension Act of 2015, amending section 773(b)(2) of the Act, for this investigation, Commerce will request information necessary to calculate the CV and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product. Commerce no longer requires a COP allegation to conduct this analysis.

[41] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017), and accompanying decision memorandum, *China's Status as a Non-Market Economy.*

[42] *See* China AD Initiation Checklist.

[43] *See* Volume VIII of the Petitions, at 10–11.

[44] *See* Volume VIII of the Petitions, at 14–18 and Exhibit AD–CN–16; *see also* the petitioners January 25, 2018, Response to the Supplemental Questions Regarding Volume VIII of the Petition (China Supplemental Response).

[45] *See* Volume VIII of the Petitions at 18–19 and Exhibit AD–CN–21.

[46] *See* Volume VIII of the Petitions at 11–12; China AD Supplement at Exhibit AD–CN–Supp–4.

[47] *See* Volume VIII of the Petitions at 18–19 and Exhibit AD–CN–21.

[48] *See* Volume VIII of the Petitions at 15–16 and Exhibit AD–CN–14; China AD Supplement at Exhibit AD–CN–Supp–3.

[49] *See* Canada AD Initiation Checklist; Greece AD Initiation Checklist; India AD Initiation Checklist; Korea AD Initiation Checklist; and Turkey AD Initiation Checklist.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *See* Korea AD Initiation Checklist.

experience of a Korean producer of welded pipe products.[55]

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of welded pipe from Canada, China, Greece, India, Korea, and Turkey are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP, or CEP, to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for welded pipe for each of the countries covered by this initiation are as follows: (1) Canada—50.89 percent; [56] (2) China—120.84—132.63 percent; [57] (3) Greece—41.04 percent; [58] (4) India—37.94 percent; [59] (5) Korea—16.18 and 20.39 percent; [60] and (6) Turkey—66.09 percent.[61]

Initiation of Less-Than-Fair-Value Investigations

Based upon the examination of the AD Petitions, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of welded pipe from Canada, China, Greece, India, Korea, and Turkey are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD laws were made.[62] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[63] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to these AD investigations.[64]

Respondent Selection

The petitioners named six companies in Canada,[65] 26 companies in India,[66] 28 companies in Korea,[67] and 13 companies in Turkey,[68] as producers/exporters of welded pipe. Following standard practice in AD investigations involving market economy countries, in the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States numbers listed with the scope in the Appendix, below.

On February 1, 2018 (for Canada), February 2, 2018 (for India), February 5, 2018 (for Korea), and February 6 (for Turkey), Commerce released CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of these AD investigations.[69] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Although Commerce normally relies on the number of producers/exporters identified in the petition and/or import data from CBP to determine whether to select a limited number of producers/exporters for individual examination in AD investigations, the petitioners identified only one company as a producer/exporter of welded pipe in Greece: Corinth Pipeworks S.A. (Corinth).[70] We currently know of no additional producers/exporters of merchandise under consideration from Greece, and the petitioners provided information from an independent third-party source as support.[71] Accordingly, Commerce intends to examine Corinth, the only known producer/exporter in the investigation for Greece.

With respect to China, the petitioners named 157 producers/exporters as accounting for the majority of exports of welded pipe to the United States from China.[72] After considering the large number of producers and exporters identified in the Petition, and considering the resources that must be utilized by Commerce to mail quantity and value (Q&V) questionnaires to all of these companies, Commerce has determined that we do not have sufficient administrative resources to mail Q&V questionnaires to all 157 identified producers and exporters. Therefore, Commerce has determined to limit the number of Q&V questionnaires it will send out to exporters and producers based on CBP data for imports meeting the description of the scope of the investigation. Accordingly, Commerce will send Q&V questionnaires based on the producers and exporters that are identified in the Petition and that also appear in the CBP data. On February 1, 2018, Commerce released CBP data under APO to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of this investigation.[73] We further stated that we will not accept rebuttal comments.[74]

In addition, Commerce will post the Q&V questionnaire along with filing instructions on the Enforcement and Compliance website at *http://www.trade.gov/enforcement/news.asp*. In accordance with our standard practice for respondent selection in AD cases involving NME countries, we intend to base respondent selection on the responses to the Q&V questionnaire that we receive.

Producers/exporters of welded pipe from China that do not receive Q&V questionnaires by mail may still submit

[55] *Id.*

[56] *See* Canada AD Initiation Checklist.

[57] *See* China AD Initiation Checklist.

[58] *See* Greece AD Initiation Checklist.

[59] *See* India AD Initiation Checklist.

[60] *See* Korea AD Initiation Checklist.

[61] *See* Turkey AD Initiation Checklist.

[62] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[63] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015).

[64] *Id.* at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[65] *See* Volume I of the Petitions at Exhibit I–3.

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *See* Commerce's Letters, ''Large Diameter Welded Line Pipe Antidumping Duty Petition: Release of Customs Data from U.S. Customs and Border Protection;'' ''Large Diameter Welded Pipe from India Antidumping Duty Petition: Release of Customs Data from U.S. Customs and Border Protection;'' ''Large Diameter Welded Pipe from the Republic of Korea Antidumping Duty Petition: Release of Customs Data from U.S. Customs and Border Protection;'' and ''Large Diameter Welded Pipe from Turkey Antidumping Duty Petition: Release of Customs Data from U.S. Customs and Border Protection.'' These documents are dated February 1, 2, 5, and 6, 2018, respectively.

[70] *See* Volume I of the Petitions, at Exhibit I–3; Volume III of the Petitions, at 3; and Greece AD Supplement, at 2–3.

[71] *See* Volume III of the Petitions, at Exhibit AD–GR–3; and Greece AD Supplement, at Exhibit AD–GR–Supp–2.

[72] *See* General Issues Supplement, at Exhibit I–Supp–4.

[73] *See* Commerce's Memorandum to the File, ''Releasing U.S. Customs and Border Protection Data,'' dated February 1, 2018.

[74] *Id.*

a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Enforcement & Compliance's website. The Q&V response must be submitted by the relevant Chinese exporters/producers no later than 5:00 p.m. ET on February 23, 2018. All Q&V responses must be filed electronically via ACCESS.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[75] The specific requirements for submitting a separate-rate application in the China investigation are outlined in detail in the application itself, which is available on Commerce's website at *http://enforcement.trade.gov/nme/nme-sep-rate.html*. The separate-rate application will be due 30 days after publication of this initiation notice.[76] Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V response will not receive separate-rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[77]

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of Canada, China, Greece, India, Korea, and Turkey *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of welded pipe from Canada, China, Greece, India, Korea, and/or Turkey are materially injuring or threatening material injury to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[78] Otherwise, the investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[79] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[80] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[81] Parties must use the certification formats provided in 19 CFR 351.303(g).[82] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

[75] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[76] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

[77] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[78] *Id.*

[79] *See* 19 CFR 351.301(b).

[80] *See* 19 CFR 351.301(b)(2).

[81] *See* section 782(b) of the Act.

[82] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: February 9, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix—Scope of the Investigations

The merchandise covered by these investigations is welded carbon and alloy steel pipe, more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Large diameter welded pipe may be used to transport oil, gas, slurry, steam, or other fluids, liquids, or gases. It may also be used for structural purposes, including, but not limited to, piling. Specifically, not included is large diameter welded pipe produced only to specifications of the American Water Works Association (AWWA) for water and sewage pipe.

Large diameter welded pipe used to transport oil, gas, or natural gas liquids is normally produced to the American Petroleum Institute (API) specification 5L. Large diameter welded pipe may also be produced to American Society for Testing and Materials (ASTM) standards A500, A252, or A53, or other relevant domestic specifications, grades and/or standards. Large diameter welded pipe can be produced to comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards, or can be non-graded material. All pipe meeting the physical description set forth above is covered by the scope of these investigations, whether or not produced according to a particular standard.

Subject merchandise also includes large diameter welded pipe that has been further processed in a third country, including but not limited to coating, painting, notching, beveling, cutting, punching, welding, or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the in-scope large diameter welded pipe.

Excluded from the scope are any products covered by the existing antidumping duty orders on welded line pipe from the Republic of Korea, welded line pipe from the Republic of Turkey, and welded ASTM A–312 stainless steel pipe from Korea, as well as any products covered by the existing countervailing duty order on welded line pipe from Turkey. *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056 (December 1, 2015); *Welded ASTM A–312 Stainless Steel Pipe from South Korea: Antidumping Duty Order,* 57 FR 62300 (December 30, 1992); and *Welded Line Pipe from the Republic of Turkey: Countervailing Duty Order,* 80 FR 75054 (December 1, 2015).

The large diameter welded pipe that is subject to these investigations is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, 7305.19.5000, 7305.31.4000, 7305.31.6010, 7305.31.6090, 7305.39.1000 and 7305.39.5000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

[FR Doc. 2018–03305 Filed 2–16–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: North Pacific Observer Safety and Security Survey.

OMB Control Number: 0648-xxxx.

Form Number(s): None.

Type of Request: Regular (request for a new information collection).

Number of Respondents: 300.

Average Hours per Response: 10 minutes.

Burden Hours: 50.

Needs and Uses: The Office of Law Enforcement, Alaska Division, is conducting a survey of North Pacific Observers to determine the number of observers who experienced victimizing behavior during deployments in 2016 and 2017. The survey will also investigate the reasons that prevented observers from reporting these violations. The results of the survey will provide the Office of Law Enforcement a better understanding of how often observers are victimized, which will enable them to reallocate resources as needed, conduct more training for observers to ensure they know how to report, conduct training to ensure people understand what constitutes a victim crime, and to increase awareness of potential victimizations. Additionally, the survey results will help law enforcement understand the barriers to disclosure, so enforcement may begin to address these impediments so they no longer prevent observers from disclosure.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: February 14, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–03364 Filed 2–16–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG036

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 55 Assessment webinar.

SUMMARY: The SEDAR 55 assessment of the South Atlantic stock of Vermilion Snapper will consist of a series webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: A SEDAR 55 Assessment webinar will be held on Monday, March 5, 2018, from 12:30 p.m. until 2 p.m.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request

webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. The product of the SEDAR webinar series will be a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment webinar are as follows:

1. Participants will continue discussions to develop population models to evaluate stock status, estimate population benchmarks, and project future conditions, as specified in the Terms of Reference.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

3. Participants will prepare a workshop report and determine whether the assessment(s) are adequate for submission for review.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: February 14, 2018.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–03414 Filed 2–16–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG035

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings, hearings, and a partially closed meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its Social Science Planning Committee (SSPC) meeting, 128th Scientific and Statistical Committee (SSC) meeting, 172nd Council meeting and its associated meetings to take actions on fishery management issues in the Western Pacific Region. A portion of the Council's Executive, Budget and Legislative Standing Committee meeting will be closed to the public.

DATES: The meetings will be held between March 5 and March 16, 2018. For specific times and agendas, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The SSPC; 128th SSC; the Council's Pelagic and International Standing Committee and Executive, Budget and Legislative Standing Committee meetings will be held at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522–8220. The 172nd Council meeting will be held at the Laniakea YWCA, Fuller Hall, 1040 Richards Street, Honolulu, HI 96813, phone: (808) 538–7061. The Fishers Forum will be held at the Pomaikaʻi Ballrooms at Dole Cannery Iwilei, 735 Iwilei Rd., Honolulu, HI 96817, phone: (808) 369–8600.

FOR FURTHER INFORMATION: Contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The SSPC meeting will be held between 1 p.m. and 5 p.m. on March 5, 2018. The 128th SSC meeting will be held between 8:30 a.m. and 5 p.m. on March 6–8, 2018. The Executive, Budget and Legislative Standing Committee meeting will be held on March 13, 2018, from 9 a.m. to 12 noon. The portion of the Executive, Budget and Legislative Standing Committee meeting from 9:30 a.m. to 10 a.m. will be closed to the public in accordance with Section 302(i)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The Pelagic and International Standing Committee will be held on March 13, 2018, between 2 p.m. and 5 p.m. The 172nd Council meeting will be held between 8:30 a.m. and 5 p.m. on March 14–16, 2018. On March 14, 2018, the Council will host a Fishers Forum between 6 p.m. and 9 p.m. All times listed are local island times.

Agenda items noted as ''Final Action Items'' refer to actions that result in Council transmittal of a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the MSA. In addition to the agenda items listed here, the Council and its advisory bodies will hear recommendations from Council advisors. An opportunity to submit public comment will be provided throughout the agendas. The order in which agenda items are addressed may change and will be announced in advance at the Council meeting. The meetings will run as late as necessary to complete scheduled business. Background documents will be available from, and written comments should be sent to, Kitty M. Simonds, Executive Director; Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522–8220 or fax: (808) 522–8226.

Agenda for the SSPC Meeting

Monday, March 5, 2018, 1 p.m. to 5 p.m.

1. Welcome and Introductions
2. New Emerging Issues by Region
   A. American Samoa
   B. CNMI
   C. Guam
   D. Hawaii
3. Review of the Draft 2017 Socioeconomic Module of the Annual Stock Assessment and Fisheries Evaluation (SAFE) Report
4. Report on PIFSC Response to the External Review
5. Review and Update of SSPC Research Priorities
6. Recommendations
7. Other Business

Agenda for 128th SSC Meeting

Tuesday, March 6, 2018, 8:30 a.m. to 5 p.m.

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 127th SSC Meeting Recommendations
4. Report from the Pacific Islands Fisheries Science Center Director
5. Insular Fisheries
   A. Main Hawaiian Islands Deep 7 Bottomfish Fishery
   1. Report on the Western Pacific Stock Assessment Review (WPSAR) of the Main Hawaiian Islands Deep 7 Bottomfish Fishery
   2. Stock assessment for the Main Hawaiian Islands Deep 7 Bottomfish Complex 2018, with Catch Projections Through 2022
   B. Options for Refining Precious Corals Essential Fish Habitat (EFH) (Initial Action Item)
   C. Updates to the Ecosystem Component Classification (Initial Action Item)
   D. Public Comment
   E. SSC Discussion and Recommendations
6. Program Planning and Research
   A. Report on the National Scientific Coordinating Subcommittee (SCS) Meeting 6
   B. Potential Ecosystem Indicators for Nearshore Fisheries
   C. Implementing Ecosystem-Based Fisheries Management (EBFM) in the Western Pacific Region
   D. Updating the Management Strategy Evaluation Priorities
   E. Public Comment
   F. SSC Discussion and Recommendations

Wednesday, March 7, 2018, 8:30 a.m. to 5 p.m.

7. Pelagic Fisheries
   A. Hawaii Longline Fisheries
   1. Hawaii Annual Longline Fisheries Report
   2. Framework for Managing Sea Turtle Interactions in the Hawaii Shallow-set Longline Fishery (Initial Action Item)
   B. U.S. Territory Longline Bigeye Specification (Final Action Item)
   C. American Samoa Longline Fisheries
   1. American Samoa Annual Longline Fisheries Report
   2. American Samoa Large Vessel Prohibited Area (Final Action Item)
      a. Report on American Samoa Cultural Fishing
   3. American Samoa Swordfish Trip Limit (Final Action Item)
   D. Electronic Monitoring and Reporting
   1. Electronic Monitoring in the Hawaii Longline Fisheries
   2. Electronic Reporting in the Hawaii Longline Fisheries
   3. Pacific Islands Regional Office (PIRO) Observer Program Electronic Reporting
   E. International Fisheries
   1. Western Central Pacific Fisheries Commission (WCPFC) 14 Outcomes
   F. Public Comment
   G. SSC Discussion and Action
8. Protected Species
   A. Report of the Albatross Workshop
   B. Report of the 2017 Hawaiian Islands Cetacean and Ecosystem Assessment Survey
   C. False Killer Whale Take Reduction Measures
   D. Updates on Endangered Species Act and Marine Mammal Protection Act Actions
   1. Insular False Killer Whale Critical Habitat
   2. Insular False Killer Whale Recovery Plan
   3. Coral Critical Habitat
   4. Loggerhead Turtle Recovery Plan
   5. Oceanic Whitetip Shark and Giant Manta Ray Listing Final Rules
   6. Other Actions
   E. Public Comment
   F. SSC Discussion and Recommendations

Thursday, March 8, 2018, 8:30 a.m. to 5 p.m.

9. Other Business
   A. 129th SSC Meeting
   B. Updates From the Social Science Planning Committee
   C. Revisions to the SSC three year plan
10. Summary of SSC Recommendations to the Council

Agenda for the Executive, Budget and Legislative Standing Committee

Tuesday, March 13, 2018, 9 a.m. to 12 noon (9:30 a.m. to 10 a.m. CLOSED)

1. Administrative Report
2. Financial Report
3. 2018 Council Member Appointments
4. Update on Litigation (Closed Session—pursuant to MSA § 302(i)(3))
5. Meetings and Workshops
6. Council Family Changes
7. Standard Operating Policies and Procedures (SOPP) Changes
8. Other Issues
9. Public Comment
10. Discussion and Recommendations

Agenda for the Pelagic and International Standing Committee

Tuesday, March 13, 2018, 2 p.m. to 5 p.m.

1. Introduction and Opening of Committee Meeting
2. American Samoa Large Vessel Prohibited Area (Final Action Item)
3. American Samoa Longline Swordfish Trip Limit (Final Action Item)
4. Framework for Managing Sea Turtle Interactions in the Hawaii Shallow-set Longline Fishery (Initial Action Item)
5. U.S. Territory Longline Bigeye Specification (Final Action Item)
6. Pelagics FEP Frameworks
   A. Amend Recommendation Made at the 161st Meeting to the Pelagic FEP Amendment To Establish a Framework for the Specification of WCPFC Catch and Effort Limits for U.S. Pelagic Fisheries in the Western Pacific Region To Include Other Measures, IATTC and any other RFMO legislation that authorizes implementation under the MSA (Final Action Item)
   B. Modification to US Participating Territory Catch and Effort Limit Amendment 7 Framework (Final Action Item)
7. Advisory Group Report and Recommendations
   A. Advisory Panels
   B. Scientific & Statistical Committee
8. Other Issues
9. Public Comment
10. Committee Discussion and Action

Agenda for 172nd Council Meeting

Wednesday, March 14, 2018, 8:30 a.m. to 5 p.m.

1. Welcome and Introductions
2. Approval of the 172nd Agenda
3. Approval of the 171st Meeting Minutes
4. Executive Director's Report
5. Agency Reports

A. National Marine Fisheries Service
1. Pacific Islands Regional Office
a. Status of Executive Order 13795 Review
2. Pacific Islands Fisheries Science Center
B. NOAA Office of General Counsel, Pacific Islands Section
C. U.S. State Department
D. U.S. Fish and Wildlife Service
1. Status of Executive Order 13792 Review
E. Enforcement
1. U.S. Coast Guard
2. NOAA Office of Law Enforcement
3. NOAA Office of General Counsel, Enforcement Section
F. Legislative Standing Committee Recommendations
G. Public Comment
H. Council Discussion and Action
6. Hawaii Archipelago & Pacific Remote Island Areas
A. Moku Pepa
B. Legislative Report
C. Enforcement Issues
D. Community Issues
1. Report of Puwalu Umi
E. Identifying Priority Areas for Effective Management of at least 30% of Hawaii's Nearshore Waters
F. Main Hawaiian Islands Deep 7 Bottomfish Fishery
1. Report on the Main Hawaiian Islands Deep 7 Bottomfish WPSAR
2. Stock Assessment for the Main Hawaiian Islands Deep 7 Bottomfish Complex 2018, with Catch Projections Through 2022
G. SSC Review of the Terms of Reference for the WPSAR of the Kona crab benchmark assessment
H. Education and Outreach Initiatives
I. Advisory Group Report and Recommendations
1. Hawaii Archipelago Fishery Ecosystem Plan Advisory Panel
2. Scientific & Statistical Committee
J. Public Comment
K. Council Discussion and Action
7. Protected Species
A. Report of the Albatross Workshop
B. Report of the 2017 Hawaiian Islands Cetacean and Ecosystem Assessment Survey
C. False Killer Whale Take Reduction Measures
D. Updates on Endangered Species Act and Marine Mammal Protection Act Actions
1. Insular False Killer Whale Critical Habitat
2. Insular False Killer Whale Recovery Plan
3. Coral Critical Habitat
4. Loggerhead Turtle Recovery Plan
5. Oceanic Whitetip Shark and Giant Manta Ray Listing Final Rules
6. Other Actions
E. Advisory Group Report and Recommendations
1. Advisory Panels
2. Scientific & Statistical Committee
F. Public Comment
G. Council Discussion and Action

Wednesday, March 14, 2018, 4 p.m.

Public Comment on Non-agenda Items

Wednesday, March 14, 2018, 6 p.m. to 9 p.m.

Fishers Forum—Hawai'i Fisheries: Getting the Full Story

Thursday, March 15, 2018, 8:30 a.m. to 5 p.m.

8. Program Planning and Research
A. Updates on the Ecosystem Component Species Classification (Initial Action Item)
B. Omnibus Amendment To Establish an Aquaculture Management Program (Initial Action Item)
C. Options for Refining Precious Corals EFH (Initial Action Item)
D. Report on the National SCS Meeting 6
E. Potential Ecosystem Indicators for Nearshore Fisheries
F. Ecosystem-Based Fisheries Management in the Western Pacific Region
G. Scoping Report on Non-Fishing Impacts to EFH
H. Update on Regional Coastal Marine Spatial Planning/Ocean Planning Efforts
I. Regional, National and International Outreach & Education
J. Advisory Group Report and Recommendations
1. Advisory Panels
2. Hawaii Regional Ecosystem Advisory Committee
3. Joint Advisory Group
a. CNMI
b. Guam
4. Archipelagic Plan Team
5. Scientific & Statistical Committee
K. Public Hearing
L. Council Discussion and Action
9. Pelagic & International Fisheries
A. Hawaii Longline Fisheries
1. Hawaii Annual Longline Fisheries Report
2. Framework for Managing Sea Turtle Interactions in the Hawaii Shallow-set Longline Fishery (Initial Action Item)
B. U.S. Territory Longline Bigeye Specification (Final Action Item)
C. Pelagics FEP Frameworks
1. Amend recommendation made at the 161st meeting to the Pelagic FEP Amendment to Establish a Framework for the Specification of WCPFC Catch and Effort Limits for U.S. Pelagic Fisheries in the Western Pacific Region To Include Other Measures, IATTC and Any Other RFMO Legislation That Authorizes Implementation Under the MSA (Final Action Item)
2. Modification to U.S. Participating Territory Catch and Effort Limit Amendment 7 Framework (Final Action Item)
D. American Samoa Longline Fisheries
1. American Samoa Annual Longline Fisheries Report
2. American Samoa Large Vessel Prohibited Area (Final Action Item)
a. Report on American Samoa Cultural Fishing
3. American Samoa Swordfish Trip Limit (Final Action Item)
E. Update on Electronic Monitoring and Reporting
1. Electronic Monitoring in the Hawaii Longline Fisheries
2. Electronic Reporting in the Hawaii Longline Fisheries
3. PIRO Observer Program Electronic Reporting
F. International Fisheries Meetings
1. WCPFC 14 Outcomes
2. SPRFMO 6 Outcomes
G. Advisory Group Report and Recommendations
1. Advisory Panels
2. Scientific & Statistical Committee
H. Pelagic & International Standing Committee Recommendations
I. Public Hearing
J. Council Discussion and Action
10. American Samoa Archipelago
A. Motu Lipoti
B. Fono Report
C. Enforcement Issues
D. Community Activities and Issues
1. Aunu'u Ice Machine
2. Report on Tuna Canneries
a. StarKist Resumes Operations in November 2017
b. Status of Tri-Marine STP Operations in American Samoa
3. ASG Fisheries Development Projects
a. Malaloa Longline Dock Extension Project
b. Tutuila and Manu'a Alia Repair
c. Fishermen Training Program
d. Working Alia Project and Loan Program Update
e. Fagatogo Fish Market & Bottomfish Export
E. Status of Manu'a Fishermen's Cooperatives
F. American Samoa Marine Conservation Plan (Final Action Item)
G. Education and Outreach
1. Report on Council Scholarship Students
2. Lunar Calendar
H. Advisory Group Reports and Recommendations

1. American Samoa Archipelago Advisory Panel
2. Scientific & Statistical Committee
I. Public Hearing
J. Council Discussion and Action

Friday, March 16, 2018, 8:30 a.m. to 5 p.m.

11. Mariana Archipelago
A. Guam
1. Isla Informe
2. Legislative Report
3. Enforcement Issues
4. Community Activities and Issues
a. Update on Territorial Science Initiative
b. Marine Recreational Information Program (MRIP) Spearfishing Data Collection Project
5. Education and Outreach Initiatives
B. Commonwealth of Northern Mariana Islands
1. Arongol Falú/Asunton i Tano
2. Legislative Report
3. Enforcement Issues
4. Community Activities and Issues
5. Education and Outreach Initiatives
C. Update on Marianas Trench Marine National Monument Management Plan and Sanctuary Request
D. Update on CNMI Marinas and Minimum Size Regulations
E. Advisory Group Reports and Recommendations
1. Mariana Archipelago FEP Advisory Panel
2. Scientific & Statistical Committee
F. Public Comment
G. Council Discussion and Action
12. Administrative Matters
A. Council Member and Staff Annual Training on Standards of Conduct
B. Financial Reports
C. Administrative Reports
D. Update on Information Inquiries and Responses
E. Council Family Changes
1. Education Committee
2. SSC
F. Report on the Winter CCC Meeting
G. SOPP Changes
H. Meetings and Workshops
I. 2018 Council Member Appointments
J. Other Business
K. Executive and Budget Standing Committee Recommendations
L. Public Comment
M. Council Discussion and Action
13. Other Business

Non-emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 172nd meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: February 14, 2018.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–03413 Filed 2–16–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Vessel and Gear Identification Requirements.

OMB Control Number: 0648–0358.

Form Number(s): None.

Type of Request: Regular (revision and extension of a currently approved information collection).

Number of Respondents: 7,825.

Average Hours per Response: Vessel marking: 45 minutes. Gear marking: Aquacultured live rocks, 10 seconds each; golden crab traps, 2 minutes each; spiny lobster traps, 7 minutes each; sea bass pots, 16 minutes each; and mackerel gillnets, and buoy gear, 20 minutes each.

Burden Hours: 51,070.

Needs and Uses: The National Marine Fisheries Service (NMFS) Southeast Region manages the U.S. fisheries in the exclusive economic zone of the Caribbean, Gulf of Mexico, and South Atlantic regions under various fishery management plans (FMPs). The regional fishery management councils prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations implementing the FMPs are located at 50 CFR part 622.

The recordkeeping and reporting requirements at 50 CFR part 622 form the basis for this collection of information. The NMFS Southeast Region requires that all permitted fishing vessels must mark their vessel with the official identification number or some form of identification. A vessel's official number, under most regulations, is required to be displayed on the port and starboard sides of the deckhouse or hull, and weather deck. In addition, certain fisheries are required to display their assigned color code. The official number and color code identify each vessel and should be visible at distance from the sea and in the air. These markings provide law enforcement personnel with a means to monitor fishing, at-sea processing, and other related activities, to ascertain whether the vessel's observed activities are in accordance with those authorized for that vessel. The identifying official number is used by NMFS, the United States Coast Guard, and other marine agencies in issuing violations, prosecutions, and other enforcement actions. Vessels that are authorized for particular fisheries are readily identified, gear violations are more readily prosecuted, and this allows for more cost-effective enforcement.

In addition to vessel marking, requirements that fishing gear be marked are essential to facilitate enforcement. The ability to link fishing gear to the vessel owner is crucial to enforcement of regulations issued under the authority of the Magnuson-Stevens Act. The marking of fishing gear is also valuable in actions concerning damage, loss, and civil proceedings. The requirements imposed in the Southeast Region are for coral aquacultured live rock; golden crab traps; mackerel gillnet floats; spiny lobster traps; black sea bass pots; and buoy gear.

Affected Public: Business and other for profit organizations; individuals and households.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: February 14, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–03366 Filed 2–16–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF592

Marine Mammals; File No. 21158–01

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that a major amendment to Permit No. 21158 has been issued to Robert Garrott, Ph.D., Montana State University, 310 Lewis Hall, Bozeman, MT 59717.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Sara Young or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On November 8, 2017, a notice was published in the **Federal Register** (82 FR 51822) that a request for an amendment Permit No. 21158 to conduct research on Weddell seals had been submitted by the above-named applicant. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permit amendment authorizes an increase in takes of seal pups authorized to be flipper tagged from a total of 675 to a total take of 1,000 pups. This field season the research team has observed an abnormally high number of pups and current take numbers are not be adequate to meet the stated scientific goals of tagging all pups produced in the Erebus Bay colonies each year. This increase is only for the 2017–18 field season and not for the duration of the permit. At the end of the public comment period, we will assess all substantive comments received and if warranted, further amend the permit in response to those comments.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: February 14, 2018.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–03392 Filed 2–16–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Halibut Fisheries: Charter Permits.

OMB Control Number: 0648–0592.

Form Number(s): None.

Type of Request: Regular (revision and extension of a currently approved information collection).

Number of Respondents: 236.

Average Hours per Response: 2 hours for Application for Transfer of Charter Halibut Permit; 0.5 hours for Application for Military Charter Permit; 2 hours for Application for Transfer between IFQ and Guided Angler Fish (GAF); and 4 hours for Appeals if an Application for Transfer between IFQ and GAF is denied by NMFS.

Burden Hours: 559.

Needs and Uses: This request is for revision and extension of a currently approved information collection.

The Alaska Pacific Halibut Charter Program established Federal Charter Halibut Permits (CHPs) for operators in the charter halibut fishery in IPHC regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). Since February 1, 2011, all vessel operators in Areas 2C and 3A with charter anglers onboard catching and retaining Pacific halibut must have a valid CHP onboard during every charter vessel fishing trip. CHPs must be endorsed with the appropriate regulatory area and number of anglers.

The National Marine Fisheries Service (NMFS) implemented this program based on recommendations by the North Pacific Fishery Management Council to meet allocation objectives in the charter halibut fishery. This program provides stability in the fishery by limiting the number of charter vessels that may participate in Areas 2C and 3A and decreasing the overall number of available CHPs over time. The program goals are to increase the value of the resource, limit boats to qualified active participants in the guided sport halibut sector, and enhance economic stability in rural coastal communities.

An appeal letter was inadvertently removed from this collection previously, now reinstated.

Affected Public: Business or other for-profit organizations; individuals and households.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: February 14, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–03365 Filed 2–16–18; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2018–0004]

Request for Information Regarding the Bureau's Supervision Program

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is seeking comments and information from interested parties to assist the Bureau in assessing the overall efficiency and effectiveness of its Supervision Program, and, consistent with the law, considering whether any changes to the program would be appropriate.

DATES: Comments must be received by May 21, 2018.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB–2018–0004, by any of the following methods:

- *Electronic:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: FederalRegisterComments@cfpb.gov*. Include Docket No. CFPB–2018–0004 in the subject line of the message.
- *Mail:* Comment Intake, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Please note the number of the topic on which you are commenting at the top of each response (you do not need to address all topics). Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, comments received will be posted without change to *http://www.regulations.gov,* with exceptions including those noted below. In addition, comments will be available for public inspection and copying at 1700 G St NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. eastern standard time. You can make an appointment to inspect the documents by telephoning 202–435–7275.

Submissions in response to this request for information, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals should not be included.

Commenters should also refrain from submitting confidential supervisory information (CSI), as defined in 12 CFR 1070.2(i). If discussing interactions on an examination, commenters should speak in generalities, and should refrain from describing the content of supervisory communications or the results of specific exams. Commenters may wish to submit input anonymously or through a representative if associating their name with their public comment would disclose the fact that they have been examined by the Bureau or the results of a particular exam. The Bureau reserves the right to redact or refrain from publishing CSI consistent with 12 CFR 1070.41 *et seq.*

FOR FURTHER INFORMATION CONTACT: For general inquiries and submission process questions, please call Brian Shearer, Counsel, at (202) 435–7611.

SUPPLEMENTARY INFORMATION: The Bureau has supervisory authority over insured depository institutions and credit unions with total assets over $10 billion and their affiliates, as well as non-depository financial institutions, regardless of size, in certain specific markets including mortgage companies (originators, brokers, servicers, and offerors of loan modifications or foreclosure relief services), payday lenders and private education lenders. The Bureau also has supervisory authority over non-depository larger participants of other markets as the Bureau defines by rule. To date, this includes larger participants in the consumer reporting, debt collection, student loan servicing, international money transfer, and automobile finance markets. Additionally, the Bureau has authority over service providers of the above referenced supervised entities, and service providers to a substantial number of depository institutions and credit unions with total assets of $10 billion or less. More detail regarding the Bureau's supervisory authority can be found principally at 12 U.S.C. 5514–5516 and 12 CFR parts 1090 and 1091.

The Bureau is, as described below, issuing this request for information seeking public comment on how best to achieve meaningful burden reduction or other improvement to the processes used by the Bureau to supervise for compliance with Federal consumer financial law (Supervision Program) while continuing to meet the Bureau's statutory and regulatory objectives and ensuring a fair and transparent process for supervised entities.

Overview of This Request for Information

The Bureau is using this request for information to seek public input regarding its Supervision Program. The Bureau's ability to supervise entities is an essential part of the Bureau's statutory mission of enforcing Federal consumer financial laws. The Bureau engages in supervisory activities in accordance with applicable law and in furtherance of its statutory mandate. The Bureau understands, however, that the Bureau's supervisory activities can impose burdens on entities. The Bureau encourages comments from all interested members of the public. The Bureau anticipates that the responding public may include supervised entities or companies supervised by other agencies, compliance professionals or members of the bar who represent these entities, individual consumers, consumer advocates, regulators, and researchers, or members of academia.

Suggested Topics for Commenters

To allow the Bureau to evaluate suggestions more effectively, the Bureau requests that, where possible, comments include:

- Specific suggestions regarding any potential updates or modifications to the Bureau's Supervision Program, consistent with the Bureau's statutory objectives, and including, in as much detail as possible (though without disclosing CSI), potential updates or modifications, supporting data or other information on impacts and costs, or information concerning alignment with the processes of other agencies with similar authorities; and
- Specific identification of any aspects of the Bureau's Supervision Program that should not be modified, consistent with the Bureau's statutory objectives, and including supporting data or other information on impacts and costs, or information concerning alignment with the processes of other agencies with similar authorities.

The following list represents a preliminary attempt by the Bureau to identify elements of Bureau processes related to its Supervision Program that may be deserving of more immediate focus. This non-exhaustive list is meant to assist in the formulation of comments and is not intended to restrict the issues that may be addressed. In addressing these topics or others, the Bureau requests that commenters identify with specificity the Bureau regulations or practices at issue, providing legal citations where appropriate and available. Please feel free to comment on some or all of the topics below, but please be sure to indicate on which area you are commenting. As noted in the instructions above, please refrain from revealing CSI in your public comment.

The Bureau is seeking feedback on all aspects of its Supervision Program, including but not limited to:

1. The timing, frequency, and scope of supervisory exams.

2. The timing, method or process used by the Bureau to collect information and documents from a supervised entity prior to the commencement of an examination. Typically, the Bureau sends an examination Information Request (IR) to a supervised entity prior to the commencement of an examination. An IR is a list of information and documents that the supervised entity is asked to provide to the Bureau for off-site review or to make available when examiners are onsite at

the entity. An IR is typically sent to an entity at least 60 days prior to the onsite start of an examination.

3. The type and volume of information and documents requested in IRs.

4. The effectiveness and accessibility of the CFPB Supervision and Examination Manual (Exam Manual). The Exam Manual provides internal direction to supervisory staff, including summaries of statutes and regulations and specific examination procedures for use by examiners in conducting exams. It is published on the Bureau's website to promote transparency and assist the public in understanding how the Bureau oversees supervised entities.

5. The efficiency and effectiveness of onsite examination work. Typically, while onsite, examination teams may review documents and data, hold meetings with management, conduct interviews with staff, make observations, and conduct transaction testing.

6. The effectiveness of Supervision's communications when potential violations are identified, including the usefulness and content of the potential action and request for response (PARR) letter. A PARR letter provides an entity with notice of preliminary findings of conduct that may violate Federal consumer financial laws and advises the entity that the Bureau is considering taking supervisory action or a public enforcement action based on the potential violations identified in the letter. Supervision invites the entity to respond to the PARR letter within 14 days and to set forth in the response any reasons of fact, law or policy why the Bureau should not take action against the entity. The Bureau often permits extensions of the response time when requested.

7. The clarity, organization, and quality of communications that report the results of supervisory activities, including oral communications from examiners and Supervisory Letters and Examination Reports.

8. The clarity of matters requiring attention (MRA) and the reasonability of timing requirements to satisfy MRAs. An MRA is used to address violation(s) of Federal consumer financial law or compliance management weaknesses. MRAs often require a written response to the Bureau and will include a due date for completion.

9. The process for appealing supervisory findings.

10. The use of third parties contracted by supervised entities to conduct assessments specified in MRAs, or to assess the sufficiency of completion of an MRA.

11. The usefulness of *Supervisory Highlights* to share findings and promote transparency. The Bureau periodically publishes *Supervisory Highlights* to apprise the public about its examination program, including the concerns that it finds during the course of its work.

12. The manner and extent to which the Bureau can and should coordinate its supervisory activity with Federal and state supervisory agencies, including through use of simultaneous exams, where feasible and consistent with statutory directives.

Authority: 12 U.S.C. 5511(c).

Dated: February 12, 2018.

Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.

[FR Doc. 2018–03358 Filed 2–16–18; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2018–HQ–0001]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: 60-Day information collections notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Deputy Chief of Staff (DCS), Strategic Deterrence and Nuclear Integration (HQ USAF/A10), on behalf of the Secretary of the Air Force, the Department of Defense (DoD) Executive Agent for the DoD Foreign Clearance Program, announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 23, 2018.

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 Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Deputy Chief of Staff (DCS), Strategic Deterrence and Nuclear Integration Executive Services Office (HQ USAF/A10E), ATTN: Ms. April Powell-Donnell, 1488 Air Force Pentagon, Washington, DC 20330–1488, at (703) 695–7467.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Aircraft and Personnel Automated Clearance System (APACS); OMB Control Number 0701–XXXX.

Needs and Uses: The information collection requirement is necessary to obtain PII information which is used by in-country U.S. Embassy approvers to grant country travel clearances, Geographical Combatant Commands approvers to grant theater travel clearances and by the Office of Secretary of Defense for Policy approvers to grant special area travel clearances. Aircrew PII information is used for verification, identification and authentication of travelers for aircraft and personnel travel clearances, as required by DoDD 4500.54E, DoD Foreign Clearance Program.

Affected Public: DoD-sponsored contractors and DoD-sponsored foreign nationals.

Annual Burden Hours: 15,400.

Number of Respondents: 30,800.

Responses per Respondent: 1.
Annual Responses: 30,800.
Average Burden per Response: 30 minutes.
Frequency: On occasion.
Travel clearance approvers are professionals who provide coordinate and grant applicable travel clearances for DoD personnel foreign travel to all overseas locations.

Dated: February 13, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–03300 Filed 2–16–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–OS–0004]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 23, 2018.

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 Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Deputy Assistant Secretary of Defense for Military Personnel Policy, ATTN: Accession Policy (3D1066), 1500 Defense Pentagon, Washington, DC 20301–1500, or call 703–695–5525.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Record of Military Processing—Armed Forces of the United States; DD Form 1966; OMB Control Number 0704–0173.

Needs and Uses: The information collection requirement is necessary to comply with regulations in accordance with Title 10 U.S.C., Sections 504, 505, 508, 12102; Title 14 U.S.C., Sections 351 and 632; and 50 U.S.C. Appendix Section 451, which requires applicants to meet standards for enlistment into the Armed Forces. This information collection is the basis for determining eligibility of applicants for enlistment in the Armed Forces and is needed to verify data given by the applicant and to determine his/her qualification of enlistment. The information collected aids in the determination of qualifications, term of service, and grade in which a person, if eligible, will enter active duty or reserve status.

Affected Public: Individuals or households.

Annual Burden Hours: 141,000 hours.
Number of Respondents: 423,000
Responses per Respondent: 1.
Annual Responses: 423,000.
Average Burden per Response: 20 minutes.
Frequency: On occasion.

Respondents are individuals applying to serve in the United States Armed Forces. The primary purpose of this information collection is to gather the necessary data for determining eligibility in the Armed Forces and for establishing personnel records on those enlisted. The DD Form 1966 is the main source document for military enlistment or continued military service records. The information collected is used to feed other DoD and service-specific forms that later would be used to issue identification cards and receive benefits associated with military service.

Dated: February 13, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–03290 Filed 2–16–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.038, 84.033, and 84.007]

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs; 2018–2019 Award Year Deadline Dates; Correction

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice; correction.

SUMMARY: On January 3, 2018, we published in the **Federal Register** (83 FR 356) a notice announcing the 2018–2019 award year deadline dates for the submission of requests and documents from postsecondary institutions for the Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs (collectively, the ''campus-based programs'') (January 3, 2018 Notice). This notice corrects the zip code for submitting requests and documents by overnight delivery from 14304 to 14302. All other information in the January 3, 2018 Notice remains the same.

DATES: The deadline dates for each program are specified in the chart in the *Deadline Dates* section of the January 3, 2018 notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Gross, Manager, Campus-Based Programs, U.S. Department of Education, Federal Student Aid, 830 First Street NE, Union Center Plaza, Room 64F2, Washington, DC 20202–5453. Telephone: (202) 377–4363 or via email: *stephanie.gross@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. No. 2017–28425, in the **Federal Register** of January 3, 2018 (83 FR 356), we make the following correction:

On page 357, in the middle column under the heading *How is it submitted*?, in the sentence ''*For overnight delivery mail to:* FISAP Administrator, 2429 Military Road, Suite 200, Niagara Falls, NY 14304,'' we remove ''14304'' and replace it with ''14302''.

Program Authority: Higher Education Act of 1965, as amended.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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 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.

Dated: February 14, 2018.

James F. Manning,

Acting Chief Operating Officer Federal Student Aid.

[FR Doc. 2018–03424 Filed 2–16–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0016]

Agency Information Collection Activities; Comment Request; Assurance of Compliance—Civil Rights Certificate

AGENCY: Office for Civil Rights (OCR), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 23, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0016. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 216–32, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Elizabeth Wiegman, 202–453–6039.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Assurance of Compliance—Civil Rights Certificate.

OMB Control Number: 1870–0503.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 25.

Total Estimated Number of Annual Burden Hours: 4.

Abstract: The Office for Civil Rights (OCR) has enforcement responsibilities under several civil rights laws, including Title VI, Title IX, Section 504, the Age Discrimination Act, and the Boy Scouts of America Equal Access Act. To meet these responsibilities, OCR collects assurances of compliance from applicants for Federal financial assistance from, and applicants for funds made available through, the Department of Education, as required by regulations. These entities include, for example, State educational agencies, local education agencies, and postsecondary educational institutions. If a recipient violates one or more of these civil rights laws, OCR and the Department of Justice can used the signed assurances of compliance in an enforcement proceeding.

Dated: February 13, 2018.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–03334 Filed 2–16–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Application Deadline for Fiscal Year 2018; Small, Rural School Achievement Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: Under the Small, Rural School Achievement (SRSA) program, Catalog of Federal Domestic Assistance (CDFA) number 84.358A, the U.S. Department of Education (Department) awards grants on a formula basis to eligible local educational agencies (LEAs) to address the unique needs of rural school districts. In this notice, we establish the deadline and describe the submission procedures for fiscal year (FY) 2018 SRSA grant applications.

All LEAs eligible for FY 2018 SRSA funds must submit an application electronically via *Grants.gov* by the deadline in this notice.

DATES:

Applications Available: February 20, 2018.

Deadline for Transmittal of Applications: April 20, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Schulz, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E–210, Washington, DC 20202. Telephone: (202) 260–7349 or by email: *reap@ed.gov*.

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Award Information

Type of Award: Formula grant.

Available Funds: The Administration has requested $87,753,000 for SRSA in FY 2018. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $0–$60,000.

Note: Depending on the number of eligible LEAs identified in a given year and the amount appropriated by Congress for the program, some eligible LEAs may receive an SRSA allocation of $0 under the statutory funding formula.

Estimated Number of Awards: 4,000.

II. Program Authority and Eligibility Information

Under what statutory authority will FY 2018 SRSA grant awards be made?

The FY 2018 SRSA grant awards will be made under title V, part B, subpart 1 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA) (Pub. L. 114–95).[1]

Which LEAs are eligible for an award under the SRSA program?

For FY 2018, an LEA (including a public charter school that meets the definition of LEA in section 8101(30) of the ESEA) is eligible for an award under the SRSA program if it meets one of the following criteria:

(a)(1) The total number of students in average daily attendance at all of the schools served by the LEA is fewer than 600; or each county in which a school served by the LEA is located has a total population density of fewer than 10 persons per square mile; and

(2) All of the schools served by the LEA are designated with a school locale code of 41, 42, or 43 by the Department's National Center for Education Statistics (NCES); or the Secretary has determined, based on a demonstration by the LEA and concurrence of the State educational agency, that the LEA is located in an area defined as rural by a governmental agency of the State.

(b) The LEA is a member of an educational service agency (ESA) that does not receive SRSA funds, and the LEA meets the eligibility requirements described in (a)(1) and (2) above.

(c) The LEA meets the requirements for a hold harmless award as described in section 5212(b)(4) of the ESEA. These are LEAs that are no longer eligible for the SRSA program because of amendments made under the ESSA to the locale code methodology and designations referenced in section 5211(b)(1)(A)(ii) of the ESEA. However, these LEAs may receive a FY 2018 award at a reduced rate as described in section 5212(b)(4) of the ESEA.

Note: The ''Choice of Participation'' provision under section 5225 of the ESEA gives LEAs eligible for both SRSA and the Rural and Low-Income School (RLIS) program authorized under title V, part B, subpart 2 of the ESEA the option to participate in either the SRSA program or the RLIS program. LEAs eligible for both SRSA and RLIS are henceforth referred to as ''dual-eligible LEAs.''

Which eligible LEAs must submit an application to receive an FY 2018 SRSA grant award?

Under 34 CFR 75.104(a), the Secretary makes a grant only to an eligible entity that submits an application.

In FY 2018, all LEAs eligible to receive an SRSA award are required to submit an SRSA application in order to receive SRSA funds, regardless of whether the LEA received an award or submitted an application in any previous year.[2] This includes LEAs eligible to receive an FY 2018 award under the hold harmless provision, dual-eligible LEAs that choose to participate in the SRSA program instead of the RLIS program, and SRSA-eligible LEAs that are members of ESAs that do not receive SRSA funds. In the case of SRSA-eligible LEAs that are members of SRSA-eligible ESAs, the respective LEAs and ESAs must coordinate directly with each other to determine which entity will submit an SRSA application, as both entities may not apply for or receive SRSA funds. Additionally, we note that dual-eligible LEAs that apply for SRSA funds in accordance with these application submission procedures will not be considered for an RLIS award.

A list of LEAs eligible for FY 2018 SRSA grant funds is available on the Department's website at: *http://www2.ed.gov/programs/reapsrsa/eligibility.html*. All LEAs on this list must submit an electronic application via *Grants.gov* in order to receive an FY 2018 SRSA grant award. The list identifies those LEAs that meet the eligibility requirements for the Rural Education Achievement Program (REAP) SRSA program, those LEAs that meet the eligibility requirements for the REAP RLIS program, those LEAs that are dual-eligible, and those LEAs that are eligible to receive an SRSA award pursuant to the hold harmless provision.

If an LEA on the Department's list of LEAs eligible to receive an FY 2018 SRSA award is no longer in existence as of the 2017–18 school year or will close prior to the 2018–2019 school year, the LEA is no longer eligible to receive an FY 2018 SRSA award and should not apply.

An LEA eligible to receive FY 2018 SRSA funds that fails to submit an FY 2018 SRSA application or fails to submit an application in accordance with the application submission procedures is at risk of not receiving an FY 2018 SRSA award. Such LEAs may receive an award only to the extent funds become available after awards are made to all eligible LEAs that complied with the application procedures.

How must LEAs eligible for an FY 2018 SRSA grant award submit an application?

LEAs must use the *Grants.gov* site for submitting SRSA applications. LEAs should review closely the next section titled Application and Submission Information for specific information about how to apply for SRSA FY 2018 funds.

III. Application and Submission Information

Electronic Submission of Applications Using Grants.gov

All LEAs eligible for FY 2018 SRSA grant funds are required to submit an electronic application using the *Grants.gov* Apply site at *www.Grants.gov* by 4:30:00 p.m., Washington, DC time, on April 20, 2018. SRSA applications must be submitted

[1] Throughout this notice, unless otherwise indicated, citations to the ESEA refer to the ESEA, as amended by the ESSA.

[2] In FY 2017, the Department implemented a new annual application process for SRSA. To assist in the transition to this annual application process, for FY 2018 only, eligible LEAs that failed to apply for an SRSA grant award in FY 2017 may apply for the funds they were eligible to receive in FY 2017—in addition to any FY 2018 SRSA grant award—through this notice.

electronically using *Grants.gov* unless you qualify for an exception to this requirement, in accordance with the instructions in this section. You may not email an electronic copy of a grant application to us.

A *Grants.gov* applicant must apply online using Workspace, a shared environment where members of a grant team may simultaneously access and edit different webforms within an application. An applicant can create an individual Workspace for each application notice and, thus, establish for that application a collaborative application package that allows more than one person in the applicant's organization to work concurrently on an application. The applicant can, thus, assign other users to participate in the Workspace. The system also enables the applicant to reuse forms from previous submissions; check them in and out and complete them; and submit its application package. For access to complete instructions on how to apply, refer to: *www.grants.gov/web/grants/applicants/apply-for-grants.html*.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on April 20, 2018. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on April 20, 2018. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on April 20, 2018.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov*.
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this program to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov*. In addition, for specific guidance and procedures for submitting an application through *Grants.gov*, please refer to the *Grants.gov* website at: *www.grants.gov/web/grants/applicants/apply-for-grants.html*.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload all documents for your application as files in a read-only, flattened Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, flattened PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.
- Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.
- These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov*, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System

If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application by the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will

contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement

You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

- You do not have access to the internet; or
- You do not have the capacity to upload large documents to the *Grants.gov* system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you send a letter or email a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. Address and mail your statement to: Mr. Eric Schulz, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E–210, Washington, DC 20202. Or email your statement to *REAP@ed.gov*.

Your paper application must be submitted in accordance with the mail or hand-delivery instructions described in this notice.

Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.358A), LBJ Basement Level 1, 400 Maryland Avenue SW, Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.358A), 550 12th Street SW, Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number (84.358A) of the program under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

IV. Other Submission Requirements

Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management

To do business with the Department of Education, you must:

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, throughout the grant performance period.

You can obtain a DUNS number from Dun and Bradstreet at the following website: *http://fedgov.dnb.com/webform*. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov*.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov*. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html*.

In addition, if you are submitting your SRSA application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and

(2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* web page: *www.grants.gov/web/grants/register.html*.

V. Accessibility Information and Program Authority

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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 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.

Program Authority: Sections 5211–5212 of the ESEA, 20 U.S.C. 7345–7345a.

Dated: February 14, 2018.

Jason Botel,

Principal Deputy Assistant Secretary, Delegated the authority to perform the functions and duties of Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2018–03419 Filed 2–16–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–56–000.

Applicants: AGH Parent LLC, Agera Energy LLC, energy.me midwest llc, Aequitas Energy, Inc.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of AGH Parent LLC, et al.

Filed Date: 2/12/18.

Accession Number: 20180212–5242.

Comments Due: 5 p.m. ET 3/5/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–843–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–02–13_Cancellation of Schedule 43H White Pine 1 SSR Cost Allocation to be effective 4/15/2018.

Filed Date: 2/13/18.

Accession Number: 20180213–5044.

Comments Due: 5 p.m. ET 3/6/18.

Docket Numbers: ER18–844–000.

Applicants: Backbone Mountain Windpower LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Notice of Change in Status to be effective 2/13/2018.

Filed Date: 2/13/18.

Accession Number: 20180213–5155.

Comments Due: 5 p.m. ET 3/6/18.

Docket Numbers: ER18–845–000.

Applicants: Diablo Winds, LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Notice of Change in Status to be effective 2/13/2018.

Filed Date: 2/13/18.

Accession Number: 20180213–5158.

Comments Due: 5 p.m. ET 3/6/18.

Docket Numbers: ER18–846–000.

Applicants: GPS Cabazon Wind LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Notice of Change in Status to be effective 2/13/2018.

Filed Date: 2/13/18.

Accession Number: 20180213–5164.

Comments Due: 5 p.m. ET 3/6/18.

Docket Numbers: ER18–847–000.

Applicants: American Transmission Systems, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ATSI submits ECSAs, Service Agreement Nos. 4865 and 4896 to be effective 4/15/2018.

Filed Date: 2/13/18.

Accession Number: 20180213–5165.

Comments Due: 5 p.m. ET 3/6/18.

Docket Numbers: ER18–848–000.

Applicants: Meyersdale Windpower LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Notice of Change in Status to be effective 2/13/2018.

Filed Date: 2/13/18.

Accession Number: 20180213–5166.

Comments Due: 5 p.m. ET 3/6/18.

Docket Numbers: ER18–849–000.

Applicants: Mill Run Windpower, LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Notice of Change in Status to be effective 2/13/2018.

Filed Date: 2/13/18.

Accession Number: 20180213–5172.

Comments Due: 5 p.m. ET 3/6/18.

Docket Numbers: ER18–850–000.

Applicants: Somerset Windpower LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Notice of Change in Status to be effective 2/13/2018.

Filed Date: 2/13/18.

Accession Number: 20180213–5175.

Comments Due: 5 p.m. ET 3/6/18.

Docket Numbers: ER18–851–000.

Applicants: Waymart Wind Farm LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Notice of Change in Status to be effective 2/13/2018.

Filed Date: 2/13/18.

Accession Number: 20180213–5176.

Comments Due: 5 p.m. ET 3/6/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 13, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–03380 Filed 2–16–18; 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 rate filings:

Docket Numbers: ER12–1436–012; ER10–2329–009; ER10–2740–011; ER10–2742–010; ER12–1260–011; ER13–1793–009; ER14–152–007.

Applicants: Eagle Point Power Generation LLC, Vineland Energy LLC, Elgin Energy Center, LLC, Hazle Spindle, LLC, Rocky Road Power, LLC,

Stephentown Spindle, LLC, Tilton Energy LLC.

Description: Supplement to June 30, 2017 and November 17, 2017 Triennial Market-Based Rate Update Filing for the Northeast Region of the Rockland Sellers.

Filed Date: 2/13/18.

Accession Number: 20180213–5248.

Comments Due: 5 p.m. ET 3/6/18.

Docket Numbers: ER18–840–000.

Applicants: Public Service Company of Colorado.

Description: Request of Public Service Company of Colorado for Waiver of Applicable Provisions of the Formula Implementation Procedures.

Filed Date: 2/9/18.

Accession Number: 20180209–5204.

Comments Due: 5 p.m. ET 2/20/18.

Docket Numbers: ER18–852–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA SA No. 4904; Queue No. AA2–119/AC1–055 to be effective 1/16/2018.

Filed Date: 2/13/18.

Accession Number: 20180213–5212.

Comments Due: 5 p.m. ET 3/6/18.

Docket Numbers: ER18–853–0000.

Applicants: California Independent System Operator Corporation.

Description: Notice of Cancellation of Physical Scheduling Plant Agreement No. 336 and Request for Waiver of Notice Requirement of California Independent System Operator Corporation.

Filed Date: 2/13/18.

Accession Number: 20180213–5292.

Comments Due: 5 p.m. ET 3/6/18.

Docket Numbers: ER18–854–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Limit Financial Exposure from Transmission Customer Defaults to be effective 4/14/2018.

Filed Date: 2/13/18.

Accession Number: 20180213–5302.

Comments Due: 5 p.m. ET 3/6/18.

Docket Numbers: ER18–855–000.

Applicants: Panoche Valley Solar, LLC.

Description: Baseline eTariff Filing: Panoche Valley Solar, LLC Application for Market-Based Rate Authority to be effective 2/14/2018.

Filed Date: 2/13/18.

Accession Number: 20180213–5314.

Comments Due: 5 p.m. ET 3/6/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 13, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–03381 Filed 2–16–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–55–000.

Applicants: EAM Nelson Holding, LLC, Entergy Nuclear Generation Company, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear Palisades, LLC, Entergy Nuclear Power Marketing, LLC, Entergy Power, LLC, EWO Marketing, LLC, RS Cogen, LLC.

Description: Joint application of EAM Nelson Holding, LLC, et al., for FPA Section 203 authorization.

Filed Date: 2/8/18.

Accession Number: 20180208–5155.

Comments Due: 5 p.m. ET 3/1/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–193–001.

Applicants: Midcontinent Independent System Operator, Inc., Dairyland Power Cooperative.

Description: Compliance filing: 2018–02–09_Compliance filing of Dairyland Power Coop to update Attachment O–DPC to be effective 1/1/2018.

Filed Date: 2/9/18.

Accession Number: 20180209–5034.

Comments Due: 5 p.m. ET 3/2/18.

Docket Numbers: ER18–504–001.

Applicants: San Diego Gas & Electric Company.

Description: Tariff Amendment: SDGE 138KV SUBSTATION FACILITIES OPERATION AND MAINTENANCE AGREEMENT—Clone to be effective 12/22/2017.

Filed Date: 2/9/18.

Accession Number: 20180209–5154.

Comments Due: 5 p.m. ET 3/2/18.

Docket Numbers: ER18–591–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 2415R9 Kansas Municipal Energy Agency NITSA and NOA to be effective 12/1/2017.

Filed Date: 2/9/18.

Accession Number: 20180209–5087.

Comments Due: 5 p.m. ET 3/2/18.

Docket Numbers: ER18–829–000.

Applicants: Wisconsin Electric Power Company.

Description: § 205(d) Rate Filing: Revisions to Reactive Power Revenue Requirement to be effective 5/1/2018.

Filed Date: 2/8/18.

Accession Number: 20180208–5114.

Comments Due: 5 p.m. ET 3/1/18.

Docket Numbers: ER18–830–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 4187; Queue No. Z2–099/AA2–086 to be effective 3/26/2018.

Filed Date: 2/8/18.

Accession Number: 20180208–5131.

Comments Due: 5 p.m. ET 3/1/18.

Docket Numbers: ER18–831–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Clarify Limitation of Liability for Attorney's Fees and Costs to be effective 4/10/2018.

Filed Date: 2/9/18.

Accession Number: 20180209–5026.

Comments Due: 5 p.m. ET 3/2/18.

Docket Numbers: ER18–832–000.

Applicants: Public Service Company of New Mexico.

Description: Initial rate filing: Executed Transmission Agreement between PNM and Avangrid Renewables, LLC to be effective 1/29/2018.

Filed Date: 2/9/18.

Accession Number: 20180209–5027.

Comments Due: 5 p.m. ET 3/2/18.

Docket Numbers: ER18–833–000.

Applicants: Evergreen Community Power, LLC.

Description: Petition of Evergreen Community Power, LLC For Waiver And Request For Expedited Action.

Filed Date: 2/9/18.

Accession Number: 20180209–5121.

Comments Due: 5 p.m. ET 3/2/18.

Docket Numbers: ER18–834–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Request for extension of Tariff Waiver of Midcontinent Independent System Operator, Inc.
Filed Date: 2/9/18.
Accession Number: 20180209–5122.
Comments Due: 5 p.m. ET 3/2/18.

Docket Numbers: ER18–835–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–02–09 Revisions to Attachment X NRIS Election Deadline to be effective 3/1/2018.
Filed Date: 2/9/18.
Accession Number: 20180209–5145.
Comments Due: 5 p.m. ET 3/2/18.

Docket Numbers: ER18–836–000.
Applicants: Energia Sierra Juarez U.S. 2, LLC.
Description: Baseline eTariff Filing: Energia Sierra Juarez U.S. 2, LLC Application for Market-Based Rates to be effective 4/10/2018.
Filed Date: 2/9/18.
Accession Number: 20180209–5153.
Comments Due: 5 p.m. ET 3/2/18.

Docket Numbers: ER18–838–000.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2018–02–09 Petition Limited Tariff Waiver—Availability Assessment Hours to be effective N/A.
Filed Date: 2/9/18.
Accession Number: 20180209–5155.
Comments Due: 5 p.m. ET 3/2/18.

Docket Numbers: ER18–839–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 290—Sun Valley Morgan Interconnection Agreement to be effective 4/11/2018.
Filed Date: 2/9/18.
Accession Number: 20180209–5157.
Comments Due: 5 p.m. ET 3/2/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 9, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–03378 Filed 2–16–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2950–011.
Applicants: Spruance Genco, LLC.
Description: Supplement to August 29, 2017 Notice of Non-Material Change in Status by Spruance Genco, LLC.
Filed Date: 2/9/18.
Accession Number: 20180209–5238.
Comments Due: 5 p.m. ET 3/2/18.

Docket Numbers: ER13–823–005; ER13–33–004.
Applicants: Castleton Commodities Merchant Trading, L.P., Collegiate Clean Energy, LLC.
Description: Notice of Non-Material Change in Status of Castleton Commodities Merchant Trading, L.P., et al.
Filed Date: 2/9/18.
Accession Number: 20180209–5216.
Comments Due: 5 p.m. ET 3/2/18.

Docket Numbers: ER15–2255–002.
Applicants: Armenia Mountain Wind, LLC.
Description: Notice of Non-Material Change in Status of Armenia Mountain Wind, LLC.
Filed Date: 2/9/18.
Accession Number: 20180209–5239.
Comments Due: 5 p.m. ET 3/2/18.

Docket Numbers: ER15–2679–007.
Applicants: Latigo Wind Park, LLC.
Description: Compliance filing: Latigo Wind Park, LLC Change in Status to be effective 2/13/2018.
Filed Date: 2/12/18.
Accession Number: 20180212–5093.
Comments Due: 5 p.m. ET 3/5/18.

Docket Numbers: ER16–2541–004.
Applicants: Pioneer Wind Park I, LLC.
Description: Compliance filing: Pioneer Wind Park I, LLC Change in Status to be effective 2/13/2018.
Filed Date: 2/12/18.
Accession Number: 20180212–5094.
Comments Due: 5 p.m. ET 3/5/18.

Docket Numbers: ER18–841–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits Fourth Quarter 2017 Capital Budget Report.
Filed Date: 2/9/18.
Accession Number: 20180209–5214.
Comments Due: 5 p.m. ET 3/2/18.

Docket Numbers: ER18–842–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Macon Parkway Solar Project LGIA Filing to be effective 1/29/2018.
Filed Date: 2/12/18.
Accession Number: 20180212–5208.
Comments Due: 5 p.m. ET 3/5/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 12, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–03379 Filed 2–16–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–490–000.
Applicants: Northwest Pipeline GP.
Description: Report Filing: Refund Report—Kemmerer Mine Relocation.
Filed Date: 2/8/18.
Accession Number: 20180208–5125.
Comments Due: 5 p.m. ET 2/20/18.

Docket Numbers: RP18–434–000.
Applicants: Vector Pipeline L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—WEP, WG & WPS to be effective 3/12/2018.
Filed Date: 2/8/18.
Accession Number: 20180208–5044.
Comments Due: 5 p.m. ET 2/20/18.

Docket Numbers: RP18–435–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Amendments to Neg Rate Agmts (QEP 36601–70, 37657–237) to be effective 2/6/2018.

Filed Date: 2/8/18.

Accession Number: 20180208–5045.

Comments Due: 5 p.m. ET 2/20/18.

Docket Numbers: RP18–436–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Amendment to Neg Rate Agmt (Chevron 41610–11) to be effective 2/8/2018.

Filed Date: 2/8/18.

Accession Number: 20180208–5046.

Comments Due: 5 p.m. ET 2/20/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 12, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–03382 Filed 2–16–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1235–017]

City of Radford; Notice of Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 1235–017.

c. *Date filed:* May 30, 2017.

d. *Applicant:* City of Radford.

e. *Name of Project:* Municipal Hydroelectric Project.

f. *Location:* On the Little River near the City of Radford in Montgomery and Pulaski Counties, Virginia. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Tim Logwood, Director of Electric Utilities for the City of Radford, 701 17th Street, Radford, VA 24141; Telephone (540) 731–3641.

i. *FERC Contact:* Allyson Conner, (202) 502–6082 or *allyson.conner@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–1235–017.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. *The existing Municipal Hydroelectric Project consists of:* (1) A 293-foot-long, 58-foot-high reinforced concrete slab and buttress dam that includes: (a) A south non-overflow section; (b) an overflow bulkhead section; (c) an eight-bay spillway section each with a steel tainter gate; (d) a powerhouse intake section; and (e) a north non-overflow section; (2) a 77-acre impoundment with a gross storage capacity of 562 acre-feet at a normal pool elevation of 1,772 feet National Geodetic Vertical Datum of 1929 (NGVD29) and a net storage capacity of 220 acre-feet between elevations 1,768 and 1,772 feet; (3) a 20-foot, 3-inch-wide intake section with angled steel trash racks (3-inch by 5/16th-inch trash rack bars spaced 2.5 inches on center) and a steel roller type head gate; (4) a 27-foot-long steel-lined penstock in concrete that transitions from a 13.5-foot-wide, 11-foot-high entrance to an 8-foot-diameter conveyance to the turbine scroll case; (5) a 30-foot-long, 28-foot-wide, and 62-foot-high powerhouse containing a single 1,185-kilowatt turbine-generator unit; (6) a 2.7-mile-long transmission line connected to the grid; and (7) appurtenant facilities.

The City of Radford proposes to revise its exhibit G to include transmission facilities composed of only three, 560-foot-long, 4.16-kV overhead conductors that transmit power to a switched disconnect/interconnection with the local distribution grid. The City of Radford states that the formerly licensed transmission line now serves to distribute power to other sources along its length and is no longer part of the project.

The City of Radford operates the project in both run-of-river and peaking modes. For the period 1984 through 2013, the project's average annual generation was about 4,550 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by

proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *A license applicant must file no later than 60 days following the date of issuance of this notice:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing Comments, Recommendations and Agency Terms and Conditions/Prescriptions.	April 2018.
Deadline for Filing Reply Comments.	May 2018.
Commission issues EA	October 2018.
Comments on EA Due	November 2018.

Dated: February 13, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–03384 Filed 2–16–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–836–000]

Energia Sierra Juarez U.S. 2, 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 Energia Sierra Juarez U.S. 2, 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 March 5, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 13, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–03383 Filed 2–16–18; 8:45 am]

BILLING CODE 6717–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Extension Without Change of an Existing Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commission announces that it intends to submit to the Office of Management and Budget (OMB) a request for a three-year extension without change of the existing recordkeeping requirements under its regulations. The Commission is seeking public comments on the proposed extension.

DATES: Written comments on this notice must be submitted on or before April 23, 2018.

ADDRESSES: Comments should be sent to Bernadette Wilson, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507. As a convenience to commenters, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile (''FAX'') machine. This limitation is necessary to assure access to the equipment. The telephone number of the fax receiver is (202) 663–4114. (This is not a toll-free number.) Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTD). (These are not toll-free telephone numbers.) Instead of sending written comments to EEOC, you may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. All comments received through this portal will be posted without change, including any personal information you provide, except as noted below. The EEOC reserves the right to refrain from posting comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products. All comments received, including any personal information provided, also will be available for public inspection during normal business hours by appointment only at the EEOC Headquarters Library, 131 M Street NE, Washington, DC 20507. Upon request, individuals who require assistance viewing comments will be provided appropriate aids such as readers or print magnifiers. To schedule an appointment, contact EEOC Library staff at (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Acting Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507, (202) 663–4681 (voice) or (202) 663–4494 (TTY), or Erin Norris, Senior Attorney, Office of Legal Counsel, Equal Employment Opportunity Commission, 129 W Trade Street, Charlotte, NC 28202, (704) 954–6491 (voice). Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY).

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964 (Title VII), Title I of the Americans with Disabilities Act (ADA), and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which collectively prohibit discrimination on the basis of race, color, religion, sex, national origin, disability, or genetic information. Section 709(c) of Title VII, section 107(a) of the ADA, and section 207(a) of GINA authorize the EEOC to issue recordkeeping and reporting regulations that are deemed reasonable, necessary or appropriate. EEOC has promulgated recordkeeping regulations under those authorities that are contained in 29 CFR part 1602 *et seq.* Those regulations do not require the creation of any particular records but generally require employers to preserve any personnel and employment records they make or keep for a period of one year. The EEOC seeks extension of the recordkeeping requirement in these regulations without change.

Pursuant to the Paperwork Reduction Act of 1995, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

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

(2) Evaluate 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;

(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 the use of appropriate, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Current Information Collection

Collection Title: Recordkeeping under Title VII, the ADA, and GINA.

OMB Number: 3046–0040.

Description of Affected Public: Employers with 15 or more employees are subject to Title VII, the ADA, and GINA.

Number of Respondents: 961,709.

Number of Reports Submitted: 0.

Estimated Burden Hours: 37,264 hours.

Cost to Respondents: $0.

Federal Cost: None.

Number of Forms: None.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), section 1007(a) of the ADA, 42 U.S.C. 12117(a), and section 207(a) of GINA, 42 U.S.C. 2000ff–6(a), require the Commission to establish regulations pursuant to which employers subject to those Acts shall make and preserve certain records to assist the EEOC in assuring compliance with the Acts' nondiscrimination in employment requirements. This is a recordkeeping requirement. Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of section 706(b) and 709(e) of Title VII which are also incorporated by reference into the ADA at section 107(a) and GINA at section 207(a).

Burden Statement: The estimated number of respondents subject to this recordkeeping requirement is 961,709 employers. An employer subject to the recordkeeping requirement in 29 CFR part 1602 must retain all personnel or employment records made or kept by that employer for one year, and must retain any records relevant to charges of discrimination filed under Title VII, the ADA, or GINA until final disposition of those matters, which may be longer than one year. This recordkeeping requirement does not require reports or the creation of new documents, but merely requires retention of documents that an employer has already made or kept in the normal course of its business operations. Thus, existing employers bear no burden under this analysis, because their systems for retaining personnel and employment records are already in place. Newly formed firms may incur a small burden when setting up their data collection and retention systems to ensure compliance with EEOC's recordkeeping requirements. We assume some effort and time must be expended by employers to familiarize themselves with the Title VII, ADA, and GINA recordkeeping requirements and explain those requirements to the appropriate staff. We estimate that 30 minutes would be needed for this one-time familiarization process. Using 2015 data from the Small Business Administration, we estimate that there are 74,528 firms that would incur this start-up burden.[1] Assuming a 30-minute burden per firm, the total annual hour burden is 37,264 hours (.5 hour × 74,528 = 37,264).

For the Commission.

Dated: February 13, 2018.

Victoria A. Lipnic,

Acting Chair.

[FR Doc. 2018–03427 Filed 2–16–18; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (3064–0082)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: 30-Day notice and request for comment.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on December 7, 2017, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until March 22, 2018.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Please include the name and OMB control number of the relevant information collection in the subject line of the message.
- *Mail:* Manny Cabeza, Counsel, Room MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

[1] Source: U.S. Small Business Administration: Statistics of U.S. Business, Release Date 1/2017. *(https://www.sba.gov/advocacy/firm-size-data). Select U.S. Static Data, U.S. Data and combines estimates from private employment, public sector, colleges and universities, and referral unions.*

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, attention FDIC Desk Officer, New Executive Office Building, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov*.

FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of any proposed information collection instrument and instructions, or desire any other additional information, please contact Manny Cabeza, Counsel, FDIC Legal Division either by mail at Room MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429; by email at *mcabeza@fdic.gov;* or by telephone at (202) 898–3767.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. All comments received will become a matter of public record. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

—Evaluate whether and if so, how, the quality, utility, and clarity of the information to be collected can be enhanced; and

—Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Overview of the Information Collection Request

1. *Title:* Recordkeeping, Disclosure and Reporting Requirements in Connection with Regulation Z.

OMB Number: 3064–0082.

Form Number: None.

Affected Public: State nonmember banks and state savings associations.

General Description of Collection: Consumer Financial Protection Bureau (CFPB) Regulation Z—12 CFR 1026 implements the Truth in Lending Act (15 U.S.C. 1601, *et seq.*) and certain provisions of the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*). This regulation prescribes uniform methods for computing the cost of credit, the disclosure of credit terms and costs, the resolution of errors and imposes various other recordkeeping, reporting and disclosure requirements. The FDIC has enforcement authority on the requirements of the CFPB's Regulation over the financial institutions it supervises. This information collection captures the recordkeeping, reporting and disclosure burdens of Regulation Z on FDIC-supervised institutions. The information collection is being revised to account for revisions and changes made to Regulation Z by the CFPB since this information collection was last submitted by the FDIC to OMB for clearance.

To arrive at the estimated annual burden the FDIC assessed the number of potential respondents to the information collection by identifying the number of FDIC-supervised institutions who reported activity that would be within the scope of the information collection requirements according to data from the most recent CALL Report. Additionally, the FDIC estimated the frequency of responses to the recordkeeping, reporting, or disclosure requirements by assessing the dollar volume of activity that would be within the scope of the information collection. In some instances the FDIC used information provided by other sources to estimate the magnitude and scope of activity attributable to FDIC-supervised institutions when more immediate information sources did not exist.

Burden Estimate: The total estimated annual burden is 2,395,630 hours (36 hours estimated implementation burden, plus 2,395,594 hours estimated ongoing burden). The burden estimate is detailed on the following tables:

IMPLEMENTATION (ONE-TIME) BURDEN ESTIMATE

	Obligation to respond/type of burden	Estimated number of respondents [1]	Estimated average number of credit accounts	Frequency of response	Number of responses	Estimated time per response (minutes)	Total estimated annual burden (hours)
Open-End Credit Products							
• Not Home-Secured Open-End Credit Plans							
○ Credit and Charge Card Provisions							
Timely Settlement of Estate Debts (1026.11(c)(1)) Written Policies and Procedures.	Mandatory Recordkeeping ...	1	N/A	1	1	480.00	8
Ability to Pay (1026.51(a)(ii)) Written Policies and Procedures.	Mandatory Recordkeeping ...	1	N/A	1	1	480.00	8
Mortgage Products (Open and Closed-End)							
• Valuation Independence							
○ Mandatory Reporting							
Implementation of Policies and Procedures (1026.42(g)).	MandatoryRecordkeeping	1	N/A	1	0	1,200.00	20
Total Estimated Implementation Burden	.....	.....	.....	.....	.....	.....	36

IMPLEMENTATION (ONE-TIME) BURDEN ESTIMATE—Continued

	Obligation to respond/type of burden	Estimated number of respondents [1]	Estimated average number of credit accounts	Frequency of response	Number of responses	Estimated time per response (minutes)	Total estimated annual burden (hours)
Ongoing Burden Estimate							
Open-End Credit Products							
• Not Home-Secured Open-End Credit Plans							
○ General Disclosure Rules for Not Home-Secured Open-End Credit Plans							
Credit and Charge Card Applications and Solicitations (1026.60).	Mandatory Disclosure	634	N/A	1	634	480.00	5,072
Account Opening Disclosures (1026.6(b))	Mandatory Disclosure	634	N/A	1	634	720.00	7,608
Periodic Statements (1026.7(b))	Mandatory Disclosure	634	N/A	12	7,608	480.00	60,864
Annual Statement of Billing Rights (1026.9(a)(1)).	Mandatory Disclosure	317	N/A	1	317	480.00	2,536
Alternative Summary Statement of Billing Rights (1026.9(a)(2)).	Voluntary Disclosure	317	N/A	12	3,804	480.00	30,432
Change in Terms Disclosures (1026.9(b) through (h)).	Mandatory Disclosure	634	N/A	1	634	480.00	5,072
○ Credit and Charge Card Provisions							
Timely Settlement of Estate Debts (1026.11(c)(2)).	Mandatory Disclosure	634	428	1	271,352	5.00	22,613
Ability to Pay (1026.51)	Mandatory Recordkeeping	634	N/A	1	634	720.00	7,608
College Student Credit Annual Report (1026.57(d)).	Mandatory Reporting	634	N/A	1	634	480.00	5,072
Submission of Credit Card Agreements (1026.58(c)).	Mandatory Reporting	634	N/A	4	2,536	180.00	7,608
Internet Posting of Credit Card Agreements (1026.58(d)).	Mandatory Disclosure	634	N/A	4	2,536	360.00	15,216
Individual Credit Card Agreements (1026.58(e)).	Mandatory Disclosure	634	125	1	79,250	15.00	19,813
• Home Equity Open-End Credit Plans (HELOC)							
○ General Disclosure Rules for HELOCs							
Application Disclosures (1026.40)	Mandatory Disclosure	2,717	N/A	1	2,717	720.00	32,604
Account Opening Disclosures (1026.6(a))	Mandatory Disclosure	2,717	N/A	1	2,717	720.00	32,604
Periodic Statements (1026.7(a))	Mandatory Disclosure	2,717	N/A	1	2,717	480.00	21,736
Annual Statement of Billing Rights (1026.9(a)(1)).	Mandatory Disclosure	2,717	N/A	1	2,717	480.00	21,736
Alternative Summary Statement of Billing Rights (1026.9(a)(2)).	Voluntary Disclosure	2,717	N/A	1	2,717	480.00	21,736
Change in Terms Disclosures (1026.9(b) through (h)).	Mandatory Disclosure	2,717	N/A	1	2,717	480.00	21,736
Notice to Restrict Credit (1026.9(c)(1)(iii); .40(f)(3)(i) and (vi)).	Mandatory Disclosure	2,717	N/A	1	2,717	120.00	5,434
• All Open-End Credit Plans							
Error Resolution (1026.13)	Mandatory Disclosure	3,624	2,963	1	10,737,912	1.0	178,965
• Closed-End Credit Products							
• General Rules for Closed-End Credit							
Other than Real Estate, Home-Secured and Private Education Loans (1026.17 and .18).	Mandatory Disclosure	1	N/A	1	1	720.00	12
• Closed-End Mortgages							
○ Application and Consummation							
Loan Estimate (1026.19(e); and .37)	Mandatory Disclosure	3,628	N/A	1	3,628	480.00	29,024
Closing Disclosure (1026.19(f); and .38)	Mandatory Disclosure	3,628	N/A	1	3,628	480.00	29,024
Record Retention of Disclosures (1026.19(e), (f); .37; and .38).	Mandatory Recordkeeping	3,628	N/A	1	3,628	18.00	1,088
○ Post-Consummation Disclosures							
Interest Rate and Payment Summary (1026.18(s)).	Mandatory Disclosure	3,628	N/A	1	3,628	2,400.00	145,120
No Guarantee to Refinance Statement (1026.18(t)).	Mandatory Disclosure	3,628	N/A	1	3,628	480.00	29,024
ARMs Rate Adjustments with Payment Change Disclosures (1026.20(c)).	Mandatory Disclosure	3,628	N/A	1	3,628	90.00	5,442
Initial Rate Adjustment Disclosure for ARMs (1026.20(d)).	Mandatory Disclosure	3,628	N/A	1	3,628	120.00	7,256
Escrow Cancellation Notice (1026.20(e))	Mandatory Disclosure	3,628	N/A	1	3,628	480.00	29,024

IMPLEMENTATION (ONE-TIME) BURDEN ESTIMATE—Continued

	Obligation to respond/type of burden	Estimated number of respondents [1]	Estimated average number of credit accounts	Frequency of response	Number of responses	Estimated time per response (minutes)	Total estimated annual burden (hours)
Periodic Statements (1026.41)	Mandatory Disclosure	3,628	N/A	1	3,628	480.00	29,024
○ Ability to Repay Requirements							
Minimum Standards (1026.43(c) through (f))	Mandatory Recordkeeping	3,628	926	1	3,359,528	15.00	839,882
Prepayment Penalties (1026.43(g))	Mandatory Disclosure	3,628	16	1	58,048	12.00	11.610
Mortgage Products (Open and Closed-End)							
• Mortgage Servicing Disclosures							
○ Payoff Statements							
Payoff Statements (1026.36(c)(3))	Mandatory Disclosure	3,628	N/A	1	3,628	480.00	29,024
○ Notice of Sale or Transfer							
Notice of Sale or Transfer (1026.39)	Mandatory Disclosure	3,628	N/A	1	3,628	480.00	29,204
• Valuation Independence							
○ Mandatory Reporting							
Reporting Appraiser Noncompliance (1026.42(g)).	Mandatory Reporting	3,628	1	1	3,628	10.00	605
Reverse and High-Cost Mortgages							
• Reverse Mortgages							
○ Reverse Mortgage Disclosures							
Reverse Mortgage Disclosures (1026.31(c)(2) and .33).	Mandatory Disclosure	14	N/A	1	14	1,440.00	336
• High-Cost Mortgage Loans							
○ HOEPA Disclosures and Notice							
HOEPA Disclosures and Notice (1026.32(c)	Mandatory Disclosure	3,628	N/A	1	3,628	14.00	847
Private Education Loans							
• Initial Disclosures							
○ Application and Solicitation Disclosures							
Application or Solicitation Disclosures (1026.47(a)).	Mandatory Disclosure	3,561	N/A	1	3,561	3,600.00	213,660
○ Approval Disclosures							
Approval Disclosures (1026.47(b))	Mandatory Disclosure	3,561	N/A	1	3,561	3,600.00	213,660
○ Final Disclosures							
Final Disclosures (1026.47(c))	Mandatory Disclosure	3,561	N/A	1	3,561	3600.00	213,660
Advertising Rules							
• All Credit Types							
○ Open-End Credit							
Open-End Credit (1026.16)	Mandatory Disclosure	3,624	5	1	18,120	20.00	6,040
○ Closed-End Credit							
Closed-End Credit (1026.24)	Mandatory Disclosure	3,628	5	1	18,140	20.00	6,047
Record Retention							
• Evidence of Compliance							
Regulation Z in General (1026.25)	Mandatory Recordkeeping	3,652	N/A	1	3,652	18.00	1,096
Total Estimated Ongoing Burden							2,395,594
Total Estimated Annual Burden							2,395,630

[1] FDIC estimates that all existing FDIC-supervised institutions have implemented the policies and procedures required by Regulation Z and will only face the estimated ongoing (transaction) burdens reflected in the Ongoing Burden Estimate table. The respondent count of 1 is intended as a placeholder for the associated burden estimate to account for any institution(s) that may become subject to the information collection requirements in the future.

Dated at Washington, DC, this 14th day of February 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–03426 Filed 2–16–18; 8:45 am]

BILLING CODE 6714–01–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 March 14, 2018.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Almena Investments, LLC.,* Almena, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Almena State Bank, Almena, Kansas.

Board of Governors of the Federal Reserve System, February 14, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–03391 Filed 2–16–18; 8:45 am]

BILLING CODE P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Board Member Meeting

Agenda

Federal Retirement Thrift Investment Board Meeting Agenda, February 26, 2018, In Person, 8:30 a.m.

Open Session

1. Approval of the minutes for the January 22, 2018 Board Meeting
2. Monthly Reports
   (a) Participant Activity
   (b) Investment Performance
   (c) Legislative
3. Quarterly Reports
   (d) Metrics
   (e) Project Activity
4. Contact Centers
5. OERM Annual Report
6. OTS Annual Report
7. FISMA
8. FISMA—OTS
9. Blended Retirement Update

Closed Session

Information covered under 5 U.S.C. 552b(c)(9)(B).

Adjourn

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: February 15, 2018.

Megan Grumbine,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2018–03554 Filed 2–15–18; 4:15 pm]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

[Docket No. 9374]

Louisiana Real Estate Appraisers Board Oral Argument Before the Commission

AGENCY: Federal Trade Commission.

ACTION: Oral argument; open meeting.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') will meet on Thursday, February 22, 2018, in Room 532 of the FTC Building for an Oral Argument In the Matter of Louisiana Real Estate Appraisers Board. The public is invited to attend and observe the open portion of the meeting, which is scheduled to begin at 2:00 p.m. The remainder of the meeting will be closed to the public.

DATES: Oral argument is scheduled for February 22, 2018 at 2:00 p.m.

ADDRESSES: Federal Trade Commission Building, 600 Pennsylvania Avenue NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Donald S. Clark, Secretary, Office of the Secretary, 600 Pennsylvania Avenue NW, Washington, DC 20580, 202–326–2515.

SUPPLEMENTARY INFORMATION:

Open Meeting

(1) Oral Argument In the Matter of Louisiana Real Estate Appraisers Board, Docket No. 9374.

Closed Meeting

(2) Executive Session to follow Oral Argument In the Matter of Louisiana Real Estate Appraisers Board, Docket No. 9374.

Record of Commission's Vote

On February 6, 2018, Commissioners Ohlhausen and McSweeny were recorded as voting in the affirmative to close Matter Number Two, and to withhold from this meeting notice such information as is exempt from disclosure under 5 U.S.C. 552b(c).

Commission's Explanation of Closing

The Commission has determined that Matter Number Two may be closed under 5 U.S.C. 552b(c)(10), and that the public interest does not require the matter to be open.

General Counsel Certification

The General Counsel has certified that Matter Number Two may properly be closed, citing the following relevant exemptive provision: 5 U.S.C. 552b(c)(10).

Expected Attendees

Expected to attend the closed meeting are the Commissioners themselves, an advisor to one of the Commissioners, and such other Commission staff as may be appropriate.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2018–03410 Filed 2–16–18; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0007 Docket 2018–0001; Sequence 1]

Information Collection; General Services Administration Acquisition Regulation; Contractor's Qualifications and Financial Information (GSA Form 527)

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding Contractor's Qualifications and Financial Information (GSA Form 527).

DATES: Submit comments on or before: April 23, 2018.

ADDRESSES: Submit comments identified by Information Collection 3090–0007, Contractor's Qualifications and Financial Information, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal searching Information Collection 3090–0007. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0007, Contractor's Qualifications and Financial Information''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0007, Contractor's Qualifications and Financial Information'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 3090–0007, Contractor's Qualifications and Financial Information.

Instructions: Please submit comments only and cite Information Collection 3090–0007, Contractor's Qualifications and Financial Information, in all correspondence related to this collection. Comments received generally will be posted without change to *regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Johnnie McDowell, Policy Analyst, Office of Governmentwide Policy, at 202–718–6112, or via email at *johnnie.mcdowell@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration will be requesting the Office of Management and Budget to extend information collection 3090–0007, concerning GSA Form 527, Contractor's Qualifications and Financial Information. This form is used to determine the financial capability of prospective contractors as to whether they meet the financial responsibility standards in accordance with the Federal Acquisition Regulation 9.103(a) and 9.104–1 and also the General Services Administration Acquisition Manual 509.105–1(a).

B. Annual Reporting Burden

Respondents: 2,542.
Responses per Respondent: 1.2.
Total Responses: 3,050.
Hours per Response: 1.5.
Total Burden Hours: 4,575.

The estimated annual burden has decreased since GSA's 2014 submission from 5,292 to 4,575 burden hours to reflect the continued use of the widespread option for potential contractors to submit financial statements and balance sheets in lieu of completing the applicable fields on GSA Form 527. The alternate submission of financial statements and balance sheets significantly reduces the burden on prospective contractors, as these documents are generally readily available. The average estimated hours to complete a response remained at the optimal rate of 1.5 hours.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0007, Contractor's Qualifications and Financial Information (GSA Form 527), in all correspondence.

Jeffrey A. Koses,
Director, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2018–03292 Filed 2–16–18; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0142; Docket 2017–0053; Sequence No. 19]

Submission for OMB Review; Past Performance Information

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning past performance information.

DATES: Submit comments on or before March 22, 2018.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–0142. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0142, Past Performance Information.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0142, Past Performance Information,'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0142, Past Performance Information.

Instructions: Please submit comments only and cite ''Information Collection 9000–0142, Past Performance Information'', in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Acquisition Policy Division, at GSA 202–501–1448 or email *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Past performance information regarding a contractor's actions under previously awarded contracts is relevant information for future source selection purposes. The information collection requirements at FAR 15.304 and 42.15 remains the same; however, the public burden has been adjusted downward, based on the total annual responses. The estimated responses used to calculate the burden is based on the availability of data on Fiscal Year (FY) 2017 awards from existing systems (the Federal Procurement Data System and the Contractor Performance Assessment Reporting System).

B. Annual Reporting Burden

Responses during Source Selection:
Respondents: 7,055.
Responses per Respondent: 4.
Annual Responses: 28,220.
Hours per Response: 2.
Total Burden Hours: 56,440.
Responses in CPARS:
Respondents: 63,444.
Responses per Respondent: 1.
Annual Responses: 63,444.
Hours per Response: 2.
Total Burden Hours: 126,888.
Total Annual Burden: 183,328.

C. Public Comments

A public notice published in the **Federal Register** at 82 FR 57270 on December 4, 2017. No comments were received. Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0142, Past Performance Information, in all correspondence.

Dated: February 14, 2018.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2018–03337 Filed 2–16–18; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–0530; Docket No. CDC–2018–0016]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled EEOICPA Dose Reconstruction Interviews and Forms. This data collection permits claimants under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) to provide information potentially useful in reconstructing radiation doses, and to confirm that they have no further information to submit.

DATES: CDC must receive written comments on or before April 23, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0016 by any of the following methods:

• *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please note: Submit all Federal comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

EEOICPA Dose Reconstruction Interviews and Forms, OMB No. 0920–0530, expires 04/30/2018—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

Background and Brief Description

On October 30, 2000, the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384–7385) was enacted. This Act established a federal compensation program for employees of the Department of Energy (DOE) and certain of its contractors, subcontractors and vendors, who have suffered cancers and other designated illnesses as a result of exposures sustained in the production and testing of nuclear weapons.

Executive Order 13179, issued on December 7, 2000, delegated authorities assigned to ''the President'' under the Act to the Departments of Labor, Health and Human Services, Energy and Justice. The Department of Health and Human Services (DHHS) was delegated the responsibility of establishing methods for estimating radiation doses received by eligible claimants with cancer applying for compensation. NIOSH is applying the following methods to estimate the radiation doses of individuals applying for compensation.

In performance of its dose reconstruction responsibilities, under the Act, NIOSH is providing voluntary interview opportunities to claimants (or their survivors) individually and providing them with the opportunity to assist NIOSH in documenting the work history of the employee by characterizing the actual work tasks performed. In addition, NIOSH and the claimant may identify incidents that may have resulted in undocumented radiation exposures, characterizing radiological protection and monitoring practices, and identify co-workers and other witnesses as may be necessary to confirm undocumented information. In this process, NIOSH uses a computer assisted telephone interview (CATI) system, which allows interviews to be conducted more efficiently and quickly as opposed to a paper-based interview instrument. Both interviews are voluntary and failure to participate in either or both interviews will not have a negative effect on the claim, although voluntary participation may assist the claimant by adding important information that may not be otherwise available.

NIOSH uses the data collected in this process to complete an individual dose reconstruction that accounts, as fully as possible, for the radiation dose incurred by the employee in the line of duty for DOE nuclear weapons production programs. After dose reconstruction, NIOSH also performs a brief, voluntary final interview with the claimant to explain the results and to allow the claimant to confirm or question the records NIOSH has compiled. This will also be the final opportunity for the claimant to supplement the dose reconstruction record.

At the conclusion of the dose reconstruction process, the claimant submits a form to confirm that the claimant has no further information to provide to NIOSH about the claim at this time. The form notifies the claimant that signing the form allows NIOSH to forward a dose reconstruction report to DOL and to the claimant, and closes the record on data used for the dose reconstruction. Signing this form does not indicate that the claimant agrees with the outcome of the dose reconstruction. The dose reconstruction results will be supplied to the claimant and to the DOL, the agency that will utilize them as one part of its determination of whether the claimant is eligible for compensation under the Act.

There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Claimant	Initial Interview	3,600	1	1	3,600
Claimant	Conclusion form OCAS–1	3,600	1	5/60	300
Total					3,900

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–03387 Filed 2–16–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–18–1048]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Assessing Education Agency Staff Perceptions of School Climate and Youth Access to Services.'' This study provides in-depth assessment of HIV and STD prevention efforts in three local education agencies funded by CDC's Division of Adolescent and School Health to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on August 17, 2017, to obtain comments from the public and affected agencies. CDC received four comments related to the previous notice. This notice serves to

allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

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

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Assessing Education Agency Staff Perceptions of School Climate and Youth Access to Services (OMB #0920–1048, Expiration Date 02/28/2018)—Revision—Division of Adolescent and School Health (DASH), National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) requests a one-year OMB approval for the revision of the information collection with OMB control number 0920–1048. The information collection uses two separate, but complementary, information collections to conduct assessment of prevention efforts that are taking place in three local education agencies (LEA) funded by the Centers for Disease Control and Prevention (CDC) under PS13–1308: *Promoting Adolescent Health through School-Based HIV/STD Prevention and School-Based Surveillance*.

This data collection will provide data and reports for the funded LEAs, and will allow the LEAs to identify areas of the program that are working well and other areas that will need additional improvement. In addition, the findings will allow CDC to determine the potential impact of currently recommended strategies and make changes to those recommendations if necessary. This revision request involves no changes to instruments, protocols, or burden estimates per respondent or per data collection cycle; however, annualized burden estimates have technical changes due to changes in the number of data collections planned and the length of clearance requested.

The first information collection will involve collecting information from a total of up to 735 LEA employees in 3 LEAs through a Web-based instrument tailored to each LEA. The instrument will include items that ask education agency staff about professional development, referral practices, community linkages/partners, school climate, school policies and practices, and staff comfort levels in helping address the health needs of youth.

The second information collection will be conducted in only one LEA (Broward County Public Schools) and is designed to provide an in-depth assessment of one LEA as a way to supplement the Web-based data collection with more detailed information. This information collection will involve in-person interviews with up to 44 LEA employees (2 district level employees, and up to 6 school level employees in each of 7 schools) to learn about six domains that can impact school climate: Policy, practice, programs, professional development, place, and pedagogy.

CDC will administer both the Web-based instrument and in-person interviews in the 2017–2018 school year as the final data collection in a series of data collections for the five-year PS13–1308 cooperative agreement. Although some staff may have participated in previous years' data collections, this is not a longitudinal design and individual staff member responses will not be tracked across the years. CDC will not collect personally identifiable information.

All school staff members will receive informed consent forms prior to participation in the information collection. The consent form explains the study and also explains participants may choose not to complete the Web-based instrument or participate in the interviews with no penalty and no impact on their job or relationship with the LEA. Participation is completely voluntary.

For the Web-based instrument, the estimated burden per response ranges from 20–25 minutes, and burden estimates presented here are based on the assumption of a 25-minute response time per response. The estimated annualized burden of this data collection is 306 hours for respondents.

For the interviews, the estimated burden per response ranges from 60–90 minutes, depending on whether the respondent is a district-level administrator, a school-level administrator, or another school staff member. The burden estimates presented here are based on the assumption of a one-hour response time per district-level and school-level administrator response and a 1.5-hour response time per school staff member response. The estimated annualized burden of this data collection is 58 hours for respondents.

The two information collections combine for a total estimated annualized burden of 364 hours for respondents. There are no costs to respondents other than their time.

TABLE A.12–1—ESTIMATED ANNUALIZE BURDEN TO RESPONDENTS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
School staff	Web-based instrument for Broward County Public Schools	245	1	25/60
School staff	Web-based instrument for Los Angeles Unified School District.	245	1	25/60

TABLE A.12–1—ESTIMATED ANNUALIZE BURDEN TO RESPONDENTS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
School staff	Web-based instrument for San Francisco Unified School District.	245	1	25/60
District-level Administrators	School Climate Index Interview Guide for District-level Administrators.	2	1	1
School-level Administrators	School Climate Index Interview Guide for School-level Administrators.	14	1	1
School Staff	School Climate Index Interview Guide for School Staff	28	1	1.5

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–03386 Filed 2–16–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–18–0109]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Respiratory Protective Devices—42 CFR part 84—Regulation to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on October 20, 2017 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

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

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Respiratory Protective Devices—42 CFR part 84—Regulation (OMB Control Number 0920–0109, expiration November 30, 2017)—Reinstatement with Change—National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The regulatory authority for the National Institute for Occupational Safety and Health (NIOSH) certification program for respiratory protective devices is found in the Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 577a, 651 *et seq.,* and 657(g)) and the Occupational Safety and Health Act of 1970 (30 U.S.C. 3, 5, 7, 811, 842(h), 844). These regulations have, as their basis, the performance tests and criteria for approval of respirators used by millions of American construction workers, miners, painters, asbestos removal workers, fabric mill workers, and fire fighters.

Regulations of the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) also require the use of NIOSH-approved respirators. These regulations also establish methods for respirator manufacturers to submit respirators for testing under the regulation and have them certified as NIOSH-approved if they meet the criteria given in the above regulation. This data collection was formerly named Respiratory Protective Devices 30 CFR part 11, but in 1995, the respirator standard was moved to 42 CFR part 84.

In accordance with 42 CFR part 84, NIOSH performs the following activities: (1) Issues certificates of approval for respirators which have met specified construction, performance, and protection requirements; (2) establishes procedures and requirements to be met in filing applications for approval; (3) specifies minimum requirements and methods to be employed by NIOSH and by applicants in conducting inspections, examinations, and tests to determine effectiveness of respirators; (4) establishes a schedule of fees to be charged to applicants for testing and certification, and (5) establishes approval labeling requirements. To establish the scope and intent of request, NIOSH collects information from those who request services under 42 CFR part 84.

Information collected from requests for respirator approval functions includes contact information and information about factors likely to affect respirator performance and use. Such information includes, but is not necessarily limited to, respirator design, manufacturing methods and materials, quality assurance plans and procedures, and user instruction and draft labels, as specified in the regulation.

The main instrument for data collection for respirator approval functions is the Standard Application

for the Approval of Respirators (SAF), currently Version 9.

Respirator manufacturers are the respondents (estimated to average 73 each year over the years 2017–2020). Upon submission of the SAF, NIOSH evaluates their applications for approval. Respirator manufacturers submit applications according to their business needs, which depends upon market conditions, technical advances, and other factors that are not easy to forecast. The best estimate for the annual number of respondents is the number from the most recent year for which data exists, 73 in 2016, an increase from 63 in 2014. Those 73 applicants submitted 542 applications in 2016, providing the current best estimate. A $200 fee is required for each application. Respondents requesting respirator approval or certain extensions of approval are required to submit additional fees for necessary testing and evaluation as specified in 42 CFR parts 84.20–22, 84.66, 84.258 and 84.1102. In 2016, $2,662,329.00 was accepted.

Applicants are required to provide test data that shows that the manufacturer is capable of ensuring that the respirator is capable of meeting the specified requirements in 42 CFR part 84. The requirement for submitted test data is likely to be satisfied by standard testing performed by the manufacturer, and is not required to follow the relevant NIOSH Standard Test Procedures. As additional testing is not required, providing proof that an adequate test has been performed is limited to providing existing paperwork.

Manufacturers with current approvals are subject to site audits by the Institute or its agents. Audits may occur periodically, typically every second year, or because of a reported issue. NIOSH completed 59 site audits from 92 respirator approval holders for the 2016 fiscal year. There is an average fee of $8,833 for each audit to align with fee collection provisions of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701), and OMB Circular A–25 Revised. There is no cost to respondents other than the time to participate. The total estimated burden hours are 118,435. Burden hours have increased due to a moderate increase in the estimated number of annual responses per respondent.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Business or other for-profit	Standard Application for the Approval of Respirators.	73	7	229
Business or other for-profit	Audit	59	1	24

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–03385 Filed 2–16–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Redesign of Existing Data Collection; National Longitudinal Survey of Older Americans Act Participants (NLSOAAP)

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995 (the PRA). This 30-Day notice collects comments on a proposed revision to an existing data collection related to the National Survey of Older Americans Act Participants (NSOAAP).

DATES: Submit written comments on the collection of information by March 22, 2018.

ADDRESSES: Submit written comments on the collection of information by fax 202–395–5806 or by email to *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Heather Menne at 202–795–7733 or *Heather.Menne@acl.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with Section 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance.

ACL is requesting approval for three years for a redesign of an existing data collection (OMB Control Number: 0985–0023).

The National Longitudinal Survey of Older Americans Act (OAA) Participants (NLSOAAP) information collection will include consumer assessment surveys for the Congregate and Home-delivered meal nutrition programs; Case Management, Homemaker, and Transportation Services; and the National Family Caregiver Support Program. This survey builds on earlier national pilot studies and surveys, as well as performance measurement tools developed by ACL grantees in the Performance Outcomes Measures Project (POMP). Changes identified as a result of these initiatives, public comment, and the input from an expert panel (*i.e.,* comprised of gerontologists, survey methodologists, and OAA program experts), are included in this proposed redesign of an existing data collection. This information will be used by ACL to track performance outcome measures; support budget requests; comply with the GPRA Modernization Act of 2010 (GPRAMA) reporting requirements; provide national benchmark information; and inform program development and management initiatives.

This proposed collection is a revision that will replace the currently approved version (OMB Control Number: 0985–0023) by transitioning from a cross-sectional survey to a longitudinal survey. The current National Survey of Older Americans Act Participants (NSOAAP), an exclusively cross-sectional survey, can transition to a longitudinal information collection component by establishing a baseline cohort and conducting follow-up interviews with that cohort at specified time intervals. A baseline cohort can be selected in the same manner as in prior cycles of the cross-sectional NSOAAP.

Area Agencies on Aging (AAAs) would be selected with a probability proportional to their size, with some large AAAs sampled with certainty.

Random samples of clients within each selected AAA will be sampled from the agencies' client lists. However, in a change from current procedures, the target sample size would be increased from current standards (n = 6000) to account for attrition of individuals over time. For the duration of the longitudinal cohort analysis, the same sample of AAAs and clients should be maintained to preserve the longitudinal nature of the study. Three strategies are key for transforming the current survey into a longitudinal study, while preserving the ability to produce nationally representative cross-sectional estimates of client characteristics at each wave. The three strategies include: (1) A higher initial sample size (n = 6600), (2) an intensive operational campaign to keep track of respondents over time, and (3) limiting the number of waves for each cohort study (*e.g.,* three waves are proposed).

Comments in Response to the 60 Day Federal Register Notice

A 60-Day notice was published in the **Federal Register** in Vol. 82, No. 185, Pages 44800–44802, on September 26, 2017 announcing that ACL was requesting approval of a proposed redesign of an existing data collection extension with modifications of a currently approved data collection. ACL received comments from sixty-four (64) organizations and 15 individuals about the Redesigned National Survey of Older Americans Act Participants (NSOAAP). ACL reviewed all of the comments. Two (2) of the comments were deemed not relevant. The first referenced other data collections and not the NSOAAP (*i.e.,* Census), and the other was commentary without reference to the NSOAAP.

The majority of the comments that ACL received requested improved methodology for collecting gender identity (*e.g.,* adding questions to understand gender identity/transgender status). ACL plans to conduct cognitive testing of questions in the redesigned information collection tool, including the gender question, to determine whether the questions are interpreted as intended. Based on the cognitive testing of the information collection tool, ACL will determine whether additional changes are necessary. Other public comments supported the: (a) Longitudinal methodology; (b) collection of data on sexual orientation; (c) inclusion of a rotating module on discrimination; and (d) limiting of burden on the Area Agencies on Aging (AAAs). Because these comments were in support of the proposed information collection, no response is needed.

Burden Estimates

Descriptions of previous National Surveys of OAA Participants can be found under the section on Performance Outcomes on ACL's website at: *https://www.acl.gov/programs/performance-older-americans-act-programs.* Copies of the survey instruments and data from previous National Surveys of OAA Participants can be found and queried using the AGing Integrated Database (AGID) at *https://agid.acl.gov/.* The proposed revisions for the National Survey of Older Americans Act Participants may be found on the ACL website at: *https://www.acl.gov/about-acl/public-input.*

The estimated average hour burden per respondent for the Redesigned NSOAAP will change from the 0.80 hour estimate in 2017 to 0.71 hours. This decrease is due to the proposed change of Area Agencies on Aging only providing client lists once at the start of the three years of data collection (compared to annually in the current cross-sectional data collection). ACL estimates the burden of this revised collection of information as follows:

TABLE—ESTIMATED ANNUALIZED BURDEN HOURS

Respondent/data collection activity	Number of respondents	Responses per respondent	Average hours per response	Annual burden hours
Baseline				
Area Agency on Aging: Respondent selection process	250	1	4.0	1,000
Service Recipients (i.e., Case Management; Congregate Nutrition; Home-delivered Nutrition; Homemaker; Transportation).	4,400	1	.6667	2,933
National Family Caregiver Support Program Clients	2,200	1	.6667	1,467
Year 2				
Area Agency on Aging: Respondent selection process	0	0	0	0
Service Recipients (i.e., Case Management; Congregate Nutrition; Home-delivered Nutrition; Homemaker; Transportation).	4,200	1	.6667	2,800
National Family Caregiver Support Program Clients	2,100	1	.6667	1,400
Year 3				
Area Agency on Aging: Respondent selection process	0	0	0	0
Service Recipients (i.e., Case Management; Congregate Nutrition; Home-delivered Nutrition; Homemaker; Transportation).	4,000	1	.6667	2,667
National Family Caregiver Support Program Clients	2,000	1	.6667	1,333
Total	19,150	Varies	.710 (weighted mean).	13,600

Dated: February 13, 2018.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2018–03390 Filed 2–16–18; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–E–1891]

Determination of Regulatory Review Period for Purposes of Patent Extension; PORTRAZZA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for PORTRAZZA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 23, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 20, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 23, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 23, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–E–1891 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; PORTRAZZA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase

begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product PORTRAZZA (necitumumab). PORTRAZZA is indicated, in combination with gemcitabine and cisplatin, for first-line treatment of patients with metastatic squamous non-small cell lung cancer. Subsequent to this approval, the USPTO received a patent term restoration application for PORTRAZZA (U.S. Patent No. 7,598,350) from Eli Lilly and Company, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 30, 2016, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of PORTRAZZA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for PORTRAZZA is 2,533 days. Of this time, 2,175 days occurred during the testing phase of the regulatory review period, while 358 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* December 19, 2008. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on December 19, 2008.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* December 2, 2014. The applicant claims October 22, 2014, as the date the biologics license application (BLA) for PORTRAZZA (BLA 125547) was initially submitted. However, FDA records indicate that BLA 125547 was submitted on December 2, 2014.

3. *The date the application was approved:* November 24, 2015. FDA has verified the applicant's claim that BLA 125547 was approved on November 24, 2015.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,321 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 13, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–03345 Filed 2–16–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–E–1888]

Determination of Regulatory Review Period for Purposes of Patent Extension; DARZALEX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for DARZALEX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 23, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 20, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 23, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 23, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your

comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–E–1888 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; DARZALEX.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product DARZALEX (daratumumab). DARZALEX is indicated for the treatment of patients with multiple myeloma who have received at least three prior lines of therapy, including a proteasome inhibitor and an immunomodulatory agent, or who are double-refractory to a proteasome inhibitor and an immunomodulatory agent. This indication is approved under accelerated approval based on response rate. Continued approval for this indication may be contingent upon verification and description of clinical benefit in confirmatory trials. Subsequent to this approval, the USPTO received a patent term restoration application for DARZALEX (U.S. Patent No. 7,829,673) from Genmab A/S, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 25, 2016, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of DARZALEX represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for DARZALEX is 1,939 days. Of this time, 1,808 days occurred during the testing phase of the regulatory review period, while 131 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* July 28, 2010. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on July 28, 2010.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* July 9, 2015. FDA has verified the applicant's claim that the

biologics license application (BLA) for DARZALEX (BLA 761,036) was initially submitted on July 9, 2015.

3. *The date the application was approved:* November 16, 2015. FDA has verified the applicant's claim that BLA 761,036 was approved on November 16, 2015.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,000 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 13, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–03342 Filed 2–16–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–XXXX]

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Office of Regulatory Affairs, Office of Global Regulatory Operations and Policy, Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Office of Global Regulatory Operations and Policy, Office of Regulatory Affairs (ORA), Office of Regulatory Science (ORS), and all ORA Laboratories have modified the structure. This new organizational structure was approved by the Secretary of Health and Human Services and effective on June 6, 2016.

FOR FURTHER INFORMATION CONTACT: Paul Norris, DVM, MPA, Director, Office of Regulatory Science, Office of Regulatory Affairs, Office of Global Regulatory Operations and Policy, Food and Drug Administration, NCTR–50 Room 404, Jefferson, Arkansas 72079, Phone: 870–543–4099.

I. Summary

Part D, Chapter D–B (Food and Drug Administration), the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services 35 FR 3685, dated February 25, 1970; 60 FR 56605, dated November 9, 1995; 64 FR 36361, dated July 6, 1999; 72 FR 50112, dated August 30, 2007; 74 FR 41713, dated August 18, 2009; and 76 FR 45270, dated July 28, 2011, is amended to reflect the reorganization of the Office of Regulatory Affairs and the Office of Regulatory Science (ORS), and all ORA Laboratories in this consolidation.

This organization expands current activities in the Office of Regulatory Science and ORA's Laboratories in support of the Agency's Program Alignment Initiative. One of the key elements outlined in the initiative is to transition to distinct commodity-based and vertically integrated regulatory programs with well-defined leads, promoting coherent policy and strategic development. This transforms the regionally organized laboratory system into a true national resource with enhanced ability to meet its public health mission to provide diverse scientific expertise, leadership, and responsive quality analytical services to safeguard public health in a global environment and foster continued flexibility across its functions and programs. It also centralizes and streamlines laboratory operations, scientific research, and support functions into one Office of Regulatory Science. Operationally this facilitates a more efficient and strategic deployment of these resources during public health emergencies and food borne outbreaks. Centralizing the laboratory system greatly enhances command and control of laboratory functions.

The Food and Drug Administration, Office of Global Regulatory Operations and Policy, Office of Regulatory Affairs (ORA), Office of Regulatory Science (ORS) has been restructured as follows:

DLLRK. ORGANIZATION. The Office of Regulatory Science is headed by the Director, Office of Regulatory Science and includes the following organizational units:

Office of Regulatory Science (DLLRK)
Automated Laboratory Management Staff (DLLRK1)
Safety and Risk Management Staff (DLLRK2)
Office of Research Coordination and Evaluation (DLLRKA)
Scientific Research Staff (DLLRKA1)
Evaluation Staff (DLLRKA2)
Office of Medical Products, Tobacco, and Specialty Laboratory Operations (DLLRKB)
Medical Products and Tobacco Scientific Staff (DLLRKB1)
Forensic Chemistry Center (DLLRKBA)
Inorganic Branch (DLLRKBA1)
Organic Branch (DLLRKBA2)
Winchester Engineering and Analytical Center (DLLRKBB)
Analytical Branch (DLLRKBB1)
Engineering Branch (DLLRKBB2)
Detroit Laboratory (DLLRKBC)
Northeast Medical Products Laboratory (DLLRKBD)
Pacific Southwest Medical Products Laboratory (DLLRKBE)
Philadelphia Laboratory (DLLRKBF)
San Juan Laboratory (DLLRKBG)
Southeast Tobacco Laboratory (DLLRKBH)
Office of Food and Feed Laboratory Operations (DLLRKC)
Food and Feed Scientific Staff (DLLRKC1)
Arkansas Laboratory (DLLRKCA)
Chemistry Branch I (DLLRKCA1)
Chemistry Branch II (DLLRKCA2)
Microbiology Branch (DLLRKCA3)
Denver Laboratory (DLLRKCB)
Chemistry Branch (DLLRKCB1)
Microbiology Branch (DLLRKCB2)
Kansas City Laboratory (DLLRKCC)
Chemistry Branch I (DLLRKCC1)
Chemistry Branch II (DLLRKCC2)
Northeast Food and Feed Laboratory (DLLRKCD)
Chemistry Branch I (DLLRKCD1)
Chemistry Branch II (DLLRKCD2)
Microbiology Sciences Branch (DLLRKCD3)
Pacific Northwest Laboratory (DLLRKCE)
Chemistry Branch (DLLRKCE1)
Microbiology Branch (DLLRKCE2)
Applied Technology Branch (DLLRKCE3)
San Francisco Laboratory (DLLRKCF)
Chemistry Branch (DLLRKCF1)
Microbiology Branch (DLLRKCF2)
Southeast Food and Feed Laboratory (DLLRKCG)
Microbiology Branch (DLLRKCG1)
Nutrient Analysis Branch (DLLRKCG2)
Chemistry Branch (DLLRKCG3)
Pacific Southwest Food and Feed Laboratory (DLLRKCH)
Chemistry Branch (DLLRKCH1)
Microbiology Branch (DLLRKCH2)

II. Delegations of Authority

Pending further delegation, directives, or orders by the Commissioner of Food and Drugs, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

III. Electronic Access

Persons interested in seeing the complete Staff Manual Guide can find it on FDA's website at: *http://www.fda.gov/AboutFDA/ReportsManualsForms/StaffManualGuides/default.htm*.

Dated: December 21, 2017.

Eric D. Hargan

Acting Secretary of Health and Human Services.

[FR Doc. 2018–03402 Filed 2–16–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0161]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Export of Food and Drug Administration-Regulated Products: Export Certificates

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 22, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0498. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Export of Food and Drug Administration-Regulated Products: Export Certificates

OMB Control Number 0910–0498—Extension

In April 1996, the FDA Export, Reform, and Enhancement Act of 1996 (FDAERA) (Pub. L. 104–134) amended sections 801(e) and 802 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 381(e) and 382). It was designed to ease restrictions on exportation of unapproved pharmaceuticals, biologics, and devices regulated by FDA. Section 801(e)(4) of FDAERA provides that persons exporting certain FDA-regulated products may request FDA to certify that the products meet the requirements of sections 801(e) and 802 or other requirements of the FD&C Act. This section of the law requires FDA to issue certification within 20 days of receipt of the request and to charge firms up to $175 for the certifications. In January 2011, section 801(e)(4)(A) was amended by the FDA Food Safety Modernization Act (Pub. L. 111–353) to provide authorization for export certification fees for food and animal feed.

This section of the FD&C Act authorizes FDA to issue export certificates for regulated food, animal feed, pharmaceuticals, biologics, and devices that are legally marketed in the United States, as well as for these same products that are not legally marketed but are acceptable to the importing country, as specified in sections 801(e) and 802 of the FD&C Act. FDA has developed various types of certificates that satisfy the requirements of section 801(e)(4)(B) of the FD&C Act. Four of those certificates are discussed in this notice: (1) Certificates to Foreign Governments, (2) Certificates of Exportability, (3) Certificates of a Pharmaceutical Product, and (4) Non-Clinical Research Use Only Certificates. FDA has updated the certificates as part of the proposed collection of information to account for the amendment authorizing export certification fees for food and animal feed. Table 1 lists the different certificates and details their uses:

TABLE 1—CERTIFICATES AND USES

Type of certificate	Use
"Supplementary Information Certificate to Foreign Government Requests". "Exporter's Certification Statement Certificate to Foreign Government" "Exporter's Certification Statement Certificate to Foreign Government (For Human Tissue Intended for Transplantation)".	For the export of products legally marketed in the United States.
"Supplementary Information Certificate of Exportability Requests" ..... "Exporter's Certification Statement Certificate of Exportability"	For the export of products not approved for marketing in the United States (unapproved products) that meet the requirements of sections 801(e) or 802 of the FD&C Act.
"Supplementary Information Certificate of a Pharmaceutical Product" ... "Exporter's Certification Statement Certificate of a Pharmaceutical Product".	Conforms to the format established by the World Health Organization and is intended for use by the importing country when the product in question is under consideration for a product license that will authorize its importation and sale or for renewal, extension, amending, or reviewing a license.
"Supplementary Information Non-Clinical Research Use Only Certificate". "Exporter's Certification Statement (Non-Clinical Research Use Only)"	For the export of a non-clinical research use only product, material, or component that is not intended for human use which may be marketed in, and legally exported from the United States under the FD&C Act.

FDA will continue to rely on self-certification by manufacturers for the first three types of certificates listed in table 1. Manufacturers are requested to self-certify that they are in compliance with all applicable requirements of the FD&C Act, not only at the time that they submit their request to the appropriate center, but also at the time that they submit the certification to the foreign government.

The appropriate FDA centers will review product information submitted by firms in support of their certificate and any suspected case of fraud will be referred to the appropriate offices.

In the **Federal Register** of November 27, 2017 (82 FR 56031), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received. The burden hours have decreased from the previous approval.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA Center	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Center for Biologics Evaluation and Research	2,651	1	2,651	1	2,651
Center for Devices and Radiological Health	11,175	1	11,175	2	22,350
Center for Drug Evaluation and Research	3,680	1	3,680	1	3,680
Center for Veterinary Medicine	1,925	1	1,925	1	1,925
Total					30,606

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 13, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–03346 Filed 2–16–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–E–1187]

Determination of Regulatory Review Period for Purposes of Patent Extension; MAESTRO RECHARGEABLE SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for MAESTRO RECHARGEABLE SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 23, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 20, 2018. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 23, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 23, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–E–1187 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; MAESTRO RECHARGEABLE SYSTEM.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the

information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device MAESTRO RECHARGEABLE SYSTEM. MAESTRO RECHARGEABLE SYSTEM is indicated for use in weight reduction in patients aged 18 years through adulthood who have a body mass index (BMI) of 40 to 45 kg/m2, or a BMI of 35 to 39.9 kg/m2 with one or more obesity related co-morbid conditions, and have failed at least one or more obesity related co-morbid conditions, and have failed at least one supervised weight management program within the past 5 years. Subsequent to this approval, the USPTO received a patent term restoration application for MAESTRO RECHARGEABLE SYSTEM (U.S. Patent No. 7,672,727) from EnteroMedics Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 12, 2016, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of MAESTRO RECHARGEABLE SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for MAESTRO RECHARGEABLE SYSTEM is 2,866 days. Of this time, 2,296 days occurred during the testing phase of the regulatory review period, while 570 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* March 13, 2007. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective on March 14, 2007. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on March 13, 2007, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* June 24, 2013. The applicant claims June 20, 2013, as the date the premarket approval application (PMA) for MAESTRO RECHARGEABLE SYSTEM (PMA P130019) was initially submitted. However, FDA records indicate that PMA P130019 was submitted on June 24, 2013.

3. *The date the application was approved:* January 14, 2015. FDA has verified the applicant's claim that PMA P130019 was approved on January 14, 2015.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 385 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 13, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–03343 Filed 2–16–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0025]

Agency Information Collection Activities; Proposed Collection; Comment Request; Animal Food Labeling; Declaration of Certifiable Color Additives

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, 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 provisions of FDA regulations requiring the declaration of color additives on animal food labels.

DATES: Submit either electronic or written comments on the collection of information by April 23, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 23, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 23, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2009–N–0025 for ''Animal Food Labeling; Declaration of Certifiable Color Additives.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's

estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Animal Food Labeling; Declaration of Certifiable Color Additives—21 CFR 501.22(k)

OMB Control Number 0910–0721—Extension

This information collection is associated with requirements under § 501.22(k) (21 CFR 501.22(k)) in which animal food manufacturers must declare the presence of certified and noncertified color additives in their animal food products on the product label. We issued this regulation in response to the Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535) to make animal food regulations consistent with the regulations regarding the declaration of color additives on human food labels and to provide animal owners with information on the color additives used in animal food. Animal owners use the information to become knowledgeable about the foods they purchase for their animals. Color additive information enables a consumer to comparison shop and to avoid substances to which their animals may be sensitive.

Description of Respondents: Respondents to this collection of information are manufacturers of pet food products that contain color additives.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR Section/activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
501.22(k); labeling of color additive or lake of color additive; labeling of color additives not subject to certification.	3,120	0.8292	2,587	0.25 (15 minutes).	647

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Having become effective November 18, 2013, we estimate that the burden associated with the labeling requirements under § 501.22(k) apply only to new product labels. Because the vast majority of animal food products that contain certified color additives are pet foods, we limit our burden estimate to reviewing labels for the use of certified color additives to pet food manufacturers subject to this regulation. Based on A.C. Nielsen Data, we estimate that the number of animal food product units subject to § 501.22(k) for which sales of the products are greater than zero is 25,874. Assuming that the flow of new products is 10 percent per year, then 2,587 new animal food products subject to § 501.22(k) will become available on the market each year. We also estimate that there are approximately 3,120 manufacturers of pet food subject to either § 501.22(k)(1) or (k)(2). Assuming the approximately 2,587 new products are split equally among the firms, then each firm would prepare labels for approximately 0.8292 new products per year (2,587 new products/3,120 firms is approximately 0.8292 labels per firm). We expect that firms prepare the required labeling for their products in a manner that takes into account at one time all information required to be disclosed on their product labels. Based on our experience with reviewing pet food labeling, we estimate that firms would require less than 0.25 hour (15 minutes) per product to comply with the requirement to include the color additive information pursuant to § 501.22(k). The total burden of this activity is 647 hours (2,587 labels × 0.25 hour/label is approximately 647 hours). The burden for this information collection has not changed since the last OMB approval.

Dated: February 13, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–03339 Filed 2–16–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Topics on Diseases of Metabolism.

Date: March 6, 2018.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Liliana N. Berti-Mattera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4215, Bethesda, MD 20892, 301–827–7609, *liliana.berti-mattera@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Neurodevelopmental Issues—Immunology, Epilepsy, Microbiome.

Date: March 9, 2018.

Time: 10:00 a.m. to 12:00 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: Samuel C. Edwards, Ph.D., Chief, Brain Disorders and Clinical Neuroscience, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel SBIB Clinical Pediatric and Fetal Applications Subcommittee.

Date: March 9, 2018.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Songtao Liu, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, Bethesda, MD 20817, 301–827–6828, *songtao.liu@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Instrumentation, Environmental, and Occupational Safety.

Date: March 12–13, 2018.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 6188 MSC 7804, Bethesda, MD 20892, 301–435–1267, *belangerm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Psycho/Neuropathology Lifespan Development, STEM Education.

Date: March 15–16, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Centric Arlington, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Elia E. Femia, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3108, Bethesda, md 20892, 301–827–7189, *femiaee@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Medical Imaging.

Date: March 15–16, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Leonid V. Tsap, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, (301) 435–2507, *tsapl@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Clinical Neurophysiology, Devices, Neuroprosthetics, and Biosensors.

Date: March 15–16, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Washington, DC Downtown, 1199 Vermont Ave. NW, Washington, DC 20005.

Contact Person: Cristina Backman, Ph.D., Scientific Review Officer, ETTN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, 301–480–9069, *cbackman@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Electronic Nicotine Delivery Systems: Basic Mechanisms of Health Effects—PAR Panel.

Date: March 15–16, 2018.

Time: 9:00 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, (Virtual Meeting).

Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR17–158: Psychopathology and Neuronal Networks.

Date: March 15, 2018.

Time: 3:00 p.m. to 6:00 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: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group AIDS Immunology and Pathogenesis Study Section.

Date: March 16, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW, Washington, DC 20037.

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Language and Communication.

Date: March 16, 2018.

Time: 10:00 a.m. to 1:00 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: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Bacterial Pathogenesis and Host Interactions.

Date: March 16, 2018.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Zika Virus Complications.

Date: March 16, 2018.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: John C. Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@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: February 13, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–03321 Filed 2–16–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Exploiting HIV and/or Host Genomic Information to Understand HIV Compartments or Reactivation in Individuals with Substance Use Disorders (R61/R33).

Date: March 7, 2018.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Ivan K. Navarro, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, Room 4242, MSC 9550, Bethesda, MD 20892, 301–827–5833, *ivan.navarro@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Identification of Genetic and Genomic Variants by Next-Gen Sequencing in Non-Human Animal Models (U01).

Date: March 7, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–827–5819, *gm145a@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA Research ''Center of Excellence'' Grant Program (P50).

Date: March 13–15, 2018.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–827–5819, *gm145a@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA Core Center of Excellence Grant Program (P30).

Date: March 15, 2018.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–827–5819, *gm145a@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Phase II: Avenir Award Program for Research on Substance Abuse and HIV/AIDS (DP2).

Date: March 19, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–827–5820, *hiromi.ono@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Phase II: Avenir Award Program for Genetics or Epigenetics of Substance Use Disorders (DP1).

Date: March 21, 2018.

Time: 9:00 a.m. to 5:00 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: Ivan K. Navarro, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, Room 4242, MSC 9550, Bethesda, MD 20892, 301–827–5833, *ivan.navarro@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Multi-Site Studies for System-Level Implementation of Substance Use Prevention and Treatment Services (R01; R34).

Date: March 23, 2018.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Julia Berzhanskaya, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, Room 4234, MSC 9550, Bethesda, MD 20892, 301–827–5840, *julia.berzhanskaya@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 13, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–03324 Filed 2–16–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Targeted Radiotherapy & Radiation-Induced Toxicity.

Date: March 20, 2018.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 3W034, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Ivan Ding, Ph.D., Scientific Review Officer, Program & Review Extramural Staff Training Office, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Bethesda, MD 20892–9750, 240–276–6444, *dingi@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; R13 Conference Grant Review.

Date: March 20, 2018.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W556, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Bratin K. Saha, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W556, Bethesda, MD 20892–9750, 240–276–6411.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 13, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–03322 Filed 2–16–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Multicenter Clinical Trial Applications.

Date: April 10, 2018.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN12N, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, Office of Grants Management and Scientific Review. National Center for Advancing Translational, Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1074—MSC 4874, Bethesda, MD 20892–4874, (301) 435–0965, *newmanla2@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 13, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–03326 Filed 2–16–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; CareerTrac (Fogarty International Center (FIC), National Institute of Environmental Health Sciences (NIEHS), National Institute of General Medical Science (NIGMS), National Cancer Institute (NCI), National Institutes of Health (NIH))

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Dr. Rachel Sturke, Evaluation Officer, Division of Science Policy, Planning, and Evaluation, FIC, NIH, 16 Center Drive, Bethesda, MD 20892 or call non-toll-free number (301)–496–1491 or Email your request, including your address to: *rachel.sturke@nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on November 9, 2017, page 52062 (82 FR 52062) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Fogarty International Center (FIC), National Institute of Environmental Health Sciences (NIEHS), including the Superfund Research Program (SRP) within NIEHS, National Institute of General Medical Science (NIGMS), and National Cancer Institute (NCI), National Institutes of Health, 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.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: CareerTrac, 0925–0568, Expiration Date: 06/30/2019—REVISION, Fogarty International Center (FIC), National Institute of Environmental Health Sciences (NIEHS), National Institute of General Medical Science (NIGMS), National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: This data collection system is being used to track, evaluate and report short and long-term outputs, outcomes and impacts of trainees involved in health research training programs—specifically tracking this for at least ten years following training by having Principal Investigators enter data after trainees have completed the program. The data collection system provides a streamlined, web-based application permitting principal investigators to record career achievement progress by trainee on a voluntary basis. FIC, NIEHS, NCI and NIGMS management will use this data to monitor, evaluate and adjust grants to ensure desired outcomes are achieved, comply with OMB Part requirements, respond to congressional inquiries, and as a guide to inform future strategic and management decisions regarding the grant program.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 16,154.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Annual hour burden
Individual: FIC Grantee	80	90	30/60	3,600
Individual: NIEHS Grantee	60	45	30/60	1,350
Individual: NCI Grantee	264	22	30/60	2,904
Individual: NIGMS Grantee	80	150	30/60	6,000
Individual: Superfund Grantee	20	105	30/60	1,050
Individual: Trainee	5,000	1	15/60	1,250
Total	5,504	34,808		16,154

Dated: January 30, 2018.

Celia Wolfman,

Project Clearance Liaison, Fogarty International Center, National Institutes of Health.

[FR Doc. 2018–03291 Filed 2–16–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Non-Invasive Neuromodulation—Mechanisms & Dose/Response Relationships.

Date: March 9, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Georgetown, 2350 M Street NW, Washington, DC 20037.

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Novel Tools to Analyze Cells and Circuits in the Brain.

Date: March 15, 2018.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Non-Invasive Neuromodulation—New Tools & Techniques.

Date: March 16, 2018.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: February 13, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–03328 Filed 2–16–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Alcoholic Hepatitis Clinical and Translational Network.

Date: March 19, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Terrace Level Conference Room 508, Bethesda, MD 20851.

Contact Person: Philippe Marmillot, Ph.D., National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 2017, Bethesda, MD 20892, 301–443–2861, *marmillotp@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: February 13, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–03323 Filed 2–16–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of General Medical Sciences Special Emphasis Panel, March 5, 2018, 8:00 a.m. to March 6, 2018, 5:00 p.m., Residence Inn Bethesda Downtown, 7335 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on January 22, 2018, 83 FR 3004.

The meeting notice is amended to change the title from Review of MIRA Applications to ESI MIRA Review. The meeting is closed to the public.

Dated: February 13, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–03325 Filed 2–16–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group; Mental Health Services Research Committee.

Date: March 7, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The Fairmont Washington, DC, 2401 M Street NW, Washington, DC 20037.

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6136, MSC 9606, Bethesda, MD 20852, 301–443–1225, *aschulte@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: February 13, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–03327 Filed 2–16–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 arranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Pulmonary Diseases.

Date: March 6–7, 2018.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC7814, Bethesda, MD 20892, 301–451–8754, *nussb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Cardiovascular and Surgical Devices.

Date: March 8–9, 2018.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: Jan Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, 301–402–9607, *Jan.Li@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–16–064: Small Grants for New Investigators to Promote Diversity in Health-Related Research (R21).

Date: March 15–16, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jianxin Hu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2156, Bethesda, MD 20892, 301–827–4417, *jianxinh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery for Aging, Neuropsychiatric and Neurologic Disorders.

Date: March 15–16, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Joseph G. Rudolph, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–408–9098, *josephru@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular Sciences.

Date: March 15–16, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Eugene Carstea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7818, Bethesda, MD 20892, (301) 408–9756, *carsteae@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Topics in Drug Discovery and Clinical Field Research.

Date: March 15, 2018.

Time: 10:00 a.m. to 2:00 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: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–996–5819, *zhengli@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

Date: March 15, 2018.

Time: 10:00 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.

Contact Person: Clara M. Cheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170,

MSC 7892, Bethesda, MD 20892, 301–435–1041, *chengc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: HIV/AIDS Innovative Research Applications.

Date: March 15–16, 2018.

Time: 10:00 a.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: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, Bethesda, MD 20892, 301–451–8754, *tuoj@nei.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR–15–024: Molecular Profiles and Biomarkers of Food and Nutrient Intake.

Date: March 15, 2018.

Time: 1:00 p.m. to 4:30 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: Gregory S Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, (301) 435–0492, *shelnessgs@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Chemo/Dietary Prevention.

Date: March 15, 2018.

Time: 12:00 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: Nicholas J. Donato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040, Bethesda, MD 20892, 301–827–4810, *nick.donato@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: February 12, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–03320 Filed 2–16–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6021–N–03]

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2018; Revised

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of revised fiscal year (FY) 2018 fair market rents (FMRs) and discussion of comments on FY 2018 FMRs.

SUMMARY: This notice updates the FY 2018 FMRs for eight areas based on new survey data: Hawaii County, HI; Hood River County, OR; Jonesboro, AR HUD Metro FMR Area (HMFA); Santa Cruz-Watsonville, CA Metropolitan Statistical Area (MSA); Santa Maria-Santa Barbara, CA MSA; Seattle-Bellevue, WA HMFA; Urban Honolulu, HI MSA; and, Wasco County, OR. All comments received on the FY 2018 FMRs are also discussed.

DATES: *Applicability:* The revised FY 2018 FMRs for these eight areas are applicable beginning March 22, 2018.

FOR FURTHER INFORMATION CONTACT: Questions on how to conduct FMR surveys or concerning further methodological explanations may be addressed to Marie L. Lihn or Peter B. Kahn, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone 202–402–2409. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339 (toll-free).

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff.

For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 (toll-free) or access the information on the HUD USER website: *http://www.huduser.gov/portal/datasets/fmr.html*. FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, 40th percentile recent-mover rents for the areas with 50th percentile FMRs will be provided in the HUD FY 2018 FMR documentation system at *https://www.huduser.gov/portal/datasets/fmr.html#2018_query* and 50th percentile rents for all FMR areas are published at *http://www.huduser.gov/portal/datasets/50per.html*.

SUPPLEMENTARY INFORMATION: On September 1, 2017 HUD published the FY 2018 FMRs, requesting comments on the FY 2018 FMRs, and outlining procedures for requesting a reevaluation of an area's FY 2018 FMRs (82 FR 41637). This notice revises FY 2018 FMRs for eight areas that requested reevaluation and provided data to HUD to allow for a reevaluation, and provides responses to the public comments HUD received on the previous notice referenced above.

I. Revised FY 2018 FMRs

The FMRs appearing in the following table supersede the use of the FY 2017 FMRs for these eight areas. The updated FY 2018 FMRs are based on surveys conducted by the area public housing agencies (PHAs) and reflect the estimated 40th percentile rent levels trended to April 1, 2018.

The FMRs for the affected area are revised as follows:

2018 Fair market rent area	FMR by number of bedrooms in unit				
	0 BR	1 BR	2 BR	3 BR	4 BR
Hawaii County, HI	877	1,009	1,322	1,663	1,936
Hood River County, OR	696	901	1,090	1,586	1,739
Jonesboro, AR, HMFA	493	613	743	1,046	1,047
Santa Cruz-Watsonville, CA MSA	1,253	1,477	1,965	2,615	2,961
Santa Maria-Santa Barbara, CA MSA	1,393	1,636	1,917	2,603	3,030
Seattle-Bellevue, WA HMFA	1,363	1,529	1,878	2,719	3,219
Urban Honolulu, HI MSA	1,352	1,527	2,031	2,954	3,525
Wasco County, OR	708	798	1,062	1,440	1,835

The FY 2018 FMRs are amended and are available on the HUD USER website: *http://www.huduser.gov/portal/datasets/fmr.html*. The FY 2018 Small Area FMRs (SAFMRs) for the revised metropolitan areas have also been

updated and may be found at *https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html*.

II. Public Comments on FY 2018 FMRs

A total of 18 comments were received and posted on *regulations.gov*, *https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=HUD-2017-0051*. Fifteen of these comments were requests for reevaluation of the FY 2018 FMRs. HUD granted requests for reevaluation for 13 FMR areas, and rejected one area's request, by Department of Human Services for Monmouth County, NJ, because this requestor did not administer at least half of the housing choice voucher families as required. HUD discussed these requests for reevaluation in a posting available at *https://www.huduser.gov/portal/datasets/fmr.html#2018_data*.

These 13 areas continued to use FY 2017 FMRs until the PHAs provided local survey rent data, which was due no later than January 5, 2018. Only eight of these 13 areas have continued to use FY 2017 FMRs because they provided sufficient data. HUD published a list of the five FMR areas not providing data on January 8, 2018 stating that the FY 2018 FMRs become applicable on January 8, 2018 (*https://www.huduser.gov/portal/datasets/fmr.html#2018_data*). This notice provides the reevaluated FY 2018 FMRs for these eight areas.

General Comments

Most of the comments discussed inaccuracies of the FMRs and a need for more current and local data. There were also comments on HUD's methodology, especially HUD's failure to use more local forecasts for the trend factor and a request to use vacancy data to adjust FMRs. Several commenters also asked HUD to agree to use FMRs revised by PHA surveys for three years as FMRs and as an input to the Renewal Funding Inflation Factors. These comments and their responses are discussed in greater detail below.

Comment: FMRs do not represent accurate on-the-ground rental market prices. The accuracy of FMRs is a function of the underlying data set and the methodology used to convert the data set to the FMRs, and the source of the data is unchanged from last year. More current and more local data should be used.

HUD Response: The American Community Survey (ACS) continues to be the primary source of gross rent data used in the calculation of the FMRs as it is the only known statistically reliable data source that provides comprehensive information on gross rents paid collected in a consistent manner nationwide. The ACS data HUD acquires is adjusted for housing quality and calculated at the 40th percentile rent for the FMR areas. HUD does point out that the data used to calculate FY 2018 FMRs is one year more current than the data used to calculate FY 2017 FMRs. HUD uses the most current ACS data available when calculating the FMRs. As an example, consider the publication timeline for the FY 2018 FMRs. The FY 2018 FMRs were calculated in June and July of 2017 for publication by September 2017, but the 2016 ACS data was not released until September through December of 2017. Therefore, during calculation of FY 2018 FMRs, the 2015 ACS data was the most current available ACS data. FMRs use a 40th percentile standard quality gross rent paid by recent movers, which requires a special tabulation from the Census that is provided by June of the year following the release of the data. HUD augments the most current available ACS data with the annual change in gross rents measured by the Bureau of Labor Statistics' Consumer Price Index (CPI), measured between 2015 and 2016 for the FY 2018 FMR, and a forecasted trend factor to align the calculated FMRs with the Fiscal Year for which the FMRs are applicable.

Comment: HUD should use local and regional forecasts of the CPI rather than national forecasts.

HUD Response: HUD has evaluated the use of more local forecasts for a trend factor, but has only been able to develop forecasts based on national inputs. The lack of consistent local data reduces the effectiveness of the local forecast.

Comment: HUD's use of Office of Management and Budget (OMB) metropolitan area definitions continues to be a problem in setting FMRs. HUD should not have changed the area definitions in FY 2006 based on the new OMB definitions and this change is continued through the changes to area definitions for FY 2016. HUD has the discretion to not accept the OMB definition changes and should exercise this discretion rather than continue to follow its past practice of updating area definitions with the OMB changes.

HUD Response: While the commenter is correct that HUD is not required to adopt OMB metropolitan area definitions for the calculation of FMRs, HUD believes there are compelling reasons to continue to use these area definitions. OMB defines metropolitan areas primarily based on commuting interchange patterns that also offer a good approximation of areas within which housing units are in competition with one another. These patterns change over time with growth and decline in jobs and populations. HUD's use of updated OMB metropolitan area definitions in estimating FMRs recognizes these changes in housing markets. The commuting interchange patterns coupled with other factors comprise the standards that have come to be known as ''core based statistical areas'' (75 FR 37246).[1] The core based statistical areas are the metropolitan and micropolitan statistical areas published by OMB. For the purposes of calculating and publishing FMRs, HUD uses the metropolitan statistical areas (and subdivisions thereof) delineated using the core based statistical area standards.

Further, the accuracy of the annual FMR values lies in the accuracy of the underlying statistical information used to calculate the FMRs. As HUD has established numerous times, the only known source of information on gross rents paid that is collected and distributed in a consistent manner across the country is the American Community Survey (ACS). As stated by OMB, ''The purpose of the Metropolitan and Micropolitan Statistical Area standards is to provide nationally consistent delineations for collecting, tabulating, and publishing Federal statistics for a set of geographic areas'' (75 FR 37249). The ACS uses the OMB metropolitan area definitions in collecting its rent (and other) data. Therefore, it is imperative that HUD continue to base the FMR calculations on OMB metropolitan area definitions, as updated.

The commenter also asserts that HUD's continued use of OMB metropolitan area definitions ''remain one of the biggest contributors to erratic and by extension inaccurate FMR and SAFMR estimates.'' HUD has employed numerous strategies to address the accuracy and to attenuate the variability in the FMRs precisely due to changes in metropolitan area definitions. For example, HUD modified the OMB-defined metropolitan areas in the FY 2006 FMR implementation if the underlying gross rent or area median family income data exhibited more than a five percent difference in the subject area's FMR or area median family income calculation. More recently, HUD has discontinued the practice of using metropolitan area wide base rents, when local values are statistically reliable, for counties newly added to metropolitan areas. HUD uses data specific to the

[1] 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas; Notice. **Federal Register**, June 28, 2010.

county when available and uses the smallest encompassing geography for recent mover gross rent update factors and CPI update factors when local data is not available.

Comment: HUD should use more timely data when calculating FMRs. HUD should work to develop a method to incorporate more recent data into its published FMRs rather than continue to rely on PHA-funded studies to correct inaccuracies in FMRs. PHAs are not well suited to conduct surveys and compile sophisticated statistical analyses. This is a function that would be better suited for HUD's Office of Policy Development and Research (PD&R).

HUD Response: There is no other data on gross rents paid that is consistently collected on a nationwide basis, available to HUD, that is more current than the data we receive from the ACS dataset. HUD recognizes the housing quality data limitations of the ACS dataset and uses a combination of ACS survey responses and a public housing ''cut-off'' rent calculated from HUD administrative data to identify and eliminate these low rent units from the distribution of gross rents paid before a 40th percentile rent is calculated. Propriety rental data cannot be used in establishing FMRs because it is not consistently available for all areas and is not statistically representative of the market it covers. Some of these sources focus on rents for major apartment projects only. Other sources that include single family homes, which are at least 30 percent of the rental market in major metropolitan areas and a greater portion in rural areas, are typically compiled from internet-based ads. These online listings of rents are akin to newspaper ads and newspaper ads have been excluded as a source of rent data for FMRs since the mid-1980s due to a directive issued by HUD's Inspector General.

HUD currently lacks funding to conduct surveys of area rents to adjust FMRs. HUD would need to obtain budget authority to conduct surveys as well as OMB approval under the Paperwork Reduction Act for the survey mechanism. HUD is subject to stricter federal rules for conducting surveys than PHAs, which means that it would take longer for HUD to pass these hurdles before being able to conduct surveys. HUD would also likely have to weigh competing needs for surveys based on a limited budget. HUD has provided technical assistance, significant at times, in compiling and analyzing the data collected by PHAs.

Comment: Allow PHAs to use other survey methodologies for at least half of the FMR Area. HUD should allow PHAs to conduct valid rent studies for their portion of an FMR area for the purposes of appealing the portion of the FMR in their service area and for RFIF purposes. These agencies do not have the necessary funding to conduct or secure services to conduct rental market survey for the entire FMR area.

HUD Response: FMRs are area-wide assessments of the 40th percentile of gross rents paid by recent movers for standard quality housing units. Surveys or other methods of collecting data in a portion of the metropolitan area may not be representative of rents across the entire area. Issues pertaining to FMRs in portions of the FMR area are best addressed through Exception Payment Standards which are defined at 24 CFR 982.503. HUD requires PHAs representing at least half of the voucher holders in a given FMR area to acknowledge and agree that a survey is necessary because the FMR directly impacts the PHAs' administration of their HCV program. HUD includes this requirement to ensure that the decision to request an FMR reevaluation is supported by PHAs that administer at least half of the vouchers under lease in the metropolitan area.

Comment: HUD should use valid rent studies in FMRs, small area FMRs (SAFMRs) and renewal funding inflation factors (RFIF) for three years. Depending on the date on which HUD approved a PHA's rent survey, HUD's use of that data in subsequent years resulted in a dilution of its value for purposes of determining RFIFs for areas.

HUD Response: HUD will use the rent surveys conducted by PHAs to modify FMRs for such time until the majority of the ACS data supersedes the survey. For a large metropolitan area where the FMR is estimated from local one-year ACS data, the survey can be used until the ACS data is of the same year (for those conducted up through June), and in the following year for those conducted from July and on. For smaller areas that rely on five-year ACS data, they will continue to have FMRs based on the local survey until more than half of the five-year ACS data is newer, which means they will be used for more than three years.

Historically, HUD has included survey-based FMRs in the next RFIF calculation following the applicability date of the newly revised FMRs. In some cases, the year of the RFIF containing the initial survey based FMR matches the year of the first implementation of the survey and in other cases the survey based FMR is included in the following year's RFIF calculation. Regardless of when the survey based FMR is included in the RFIF calculation, the survey-based FMRs remain part of the calculation until the survey is no longer used in the calculation of the FMRs.

Comment: PHAs should freeze FMRs and payment standards during FMR appeals. PHAs should be awarded HAP funds upon successful appeal of changes to the HUD-approved inflation factor adjustment.

HUD Response: The Housing Opportunities Through Modernization Act (HOTMA) specifies that newly posted FMRs do not go into effect in areas that have initiated valid reevaluation requests. Existing FMRs remain in effect until the reevaluation process is complete and reevaluated FMRs have been posted and become applicable. With regards to the portion of the comment concerning the awarding of HAP funds, reevaluated FMRs are included in the next calculation of RFIFs following the end of the reevaluation process. Should the renewal funding calculations and awards occur before the reevaluation process is complete, under current HUD policy, the survey-based FMR increase is incorporated into the calculation of the RFIFs in the following year.

Comment: HUD should request a reallocation of a portion of the $41.5 million that the Department receives so that it can begin to conduct its own rent studies.

HUD Response: The budget item of $41.5 million covers the cost of conducting the American Housing Survey, the Survey of Construction, the Survey of Market Absorption, the Rental Housing Finance Survey, and the Manufactured Housing Placement Survey. There are no excess funds in that amount that could be used to conduct area rent surveys to adjust FMRs, so additional funds would have to be made available for area rent surveys. HUD would also need a contract to spend these additional funds for surveys and would have to receive approval under the Paperwork Reduction Act from OMB (required for any data collection activity of 10 or more respondents (in this case tenants)).

Comment: For certain rural areas the FMR is too high.

HUD Response: Unfortunately, in many cases these are small areas that do not have enough ACS data for locally calculated FMRs. These areas typically have FMRs set at the state minimum FMR. Where available, HUD publishes the rents below the state minimum for use as public housing flat rents. A PHA that believes the FMR for a rural county is too high for purposes of HCV administration may request HUD approval to establish a payment

standard lower than the basic range in accordance with 24 CFR 982.503(d).

Comment: The zero bedroom and one-bedroom FMRs are the same. Please verify.

HUD Response: This is correct. HUD does not allow the zero-bedroom FMR to be greater than the one-bedroom FMR, so where it would be higher, it is set at the one-bedroom FMR. Zero-bedroom units, or efficiencies, represent a much smaller segment of the rental market population than one-bedroom units and their rents may be skewed in some areas by a preponderance of the units in newer buildings and/or buildings with better amenities.

Comment: Small Area FMRs should not be required. SAFMRs will increase the complexity in administering the voucher program by increasing the number of payment schedules. Also, many ZIP Codes where voucher holders live have lower SAFMRs that will force voucher holders out of neighborhoods where they have lived their entire lives to areas away from their support groups.

HUD Response: Small Area FMRs (SAFMRs) are required in the administration of the housing choice voucher (HCV) program in a limited number of metropolitan areas where voucher holders are highly concentrated in areas of concentrated low income and where SAFMRs are likely to be an effective tool in helping HCV holders access units in higher opportunity areas.

HUD included provisions in the SAFMR rule to provide PHAs the ability to maintain payment standards at current levels for in-place tenants should the PHA choose to do so.

To assist with the administrative complexity of converting to SAFMRs, HUD has tasked a Technical Assistance provider to develop training materials and to conduct in-person trainings for all PHAs who are required to implement SAFMRs.

III. Environmental Impact

This Notice makes changes in FMRs for two FMR areas and does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: February 13, 2018.

Todd M. Richardson,

Deputy Assistant Secretary, Office of Policy Development, Office of Policy Development and Research.

[FR Doc. 2018–03398 Filed 2–16–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7009–N–01]

Privacy Act of 1974, System of Records; Notice: Comprehensive Servicing and Management System

AGENCY: Office of Asset Management and Portfolio Oversight (OAMPO), HUD.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Housing and Urban Development (HUD), Office of Asset Management and Portfolio Oversight (OAMPO) provides public notice that it proposes to establish a new system, Department of Housing and Urban Development System of Records Titled, ''Comprehensive Servicing and Monitoring System (CSMS) P085''.

DATES: March 22, 2018.

Comments Due Date: March 22, 2018.

ADDRESSES: You may submit comments, identified by docket number and title, by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: privacy@hud.gov.

Mail: Attention: Housing and Urban Development, Privacy Office; John Bravacos, The Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: John Bravacos, SAOP, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone number 202–708–1515 for privacy issues please contact: Senior Agency Official, John Bravacos.

SUPPLEMENTARY INFORMATION: This system of records titled P085—Comprehensive Servicing and Monitoring System (CSMS), Department of Housing and Urban Development (HUD), Office of Asset Management and Portfolio Oversight (OAMPO). P–085–CSMS is operated by HUD's OAMPO, and includes personally identifiable information (PII) provided on or about families receiving rental housing assistance, multifamily property owners, multifamily vendors, and HUD employees who have system access, which information is retrieved by a name or unique identifier. CSMS, identified in HUD's Inventory of Systems as P085, supports the accounting and asset management functions for the Federal Housing Administration (FHA) an agency of the US Department of Housing and Urban Development. The system supports asset servicing and accounting for HUD held and HUD-owned multifamily assets and is a subsidiary ledger to the FHA general ledger. CSMS supports several management and accounting functions for these loans and properties, including financial recordkeeping, performance analysis, and status reporting for HUD's financial and business managers. CSMS is a proprietary system that maintains both Business Identifiable Information (BII) and PII.

This system of records incorporates Federal privacy requirements and HUD policy requirements. The Privacy Act provides certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to protect records in an agency system of records from unauthorized disclosure, ensure that information is current for its intended use, and that adequate safeguards are provided to prevent misuse of such information. The notice reflects the Department's focus on industry best practices in protecting the personal privacy of the individuals covered by each system notification. This notice states the name and location of the record system, the authority for and manner of its operations, the categories of individuals it covers, the records it contains, the sources of the information for those records, the routine uses made of the records, and the system of records exemption types. In addition, the notice includes the business address of the HUD officials who will inform interested persons of the procedures whereby they may gain access to and/or request amendments to records pertaining to them. The routine uses that apply to this publication are reiterated based on past publication to clearly communicate the ways in which HUD continues to conduct some of its business practices. In accordance with 5 U.S.C. 552a(e)(4) and (11), HUD has provided a report of this new system to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Oversight and Government Reform as instructed by OMB Circular No. A–108, ''Federal Agencies Responsibilities for Review, Reporting, and Publication under the Privacy Act.''

SYSTEM NAME AND NUMBER

P085—COMPREHENSIVE SERVICING AND MONITORING SYSTEM (CSMS)

SECURITY CLASSIFICATION:

UNCLASSIFIED, BUT SENSITIVE

SYSTEM LOCATION:

Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410 or at the locations of the Business Service Provider/Contractor under contract with HUD.

SYSTEM MANAGER(S):

Robert Iber, Department of Housing and Urban Development, Office of Asset Management and Portfolio Oversight, 451 Seventh Street SW, Washington, DC 20410, (202) 708–3055.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

HUD/FHA collects social security numbers during the FHA loan endorsement process and by request via IRS Form W–9 to update its records. Tenant information is collected by HUD contractors under the National Housing Act (12 U.S.C 1701 *et seq.*). CSMS provides servicing for loans acquired through the payment of an insurance claims under Housing Act Sections 202, 207, 223(f), 236, 221(d)(3), 221 (d)(4), 232, and 242. In addition, CSMS includes Mark to Market loans including Demonstration preservation programs from the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) (42 U.S.C. 1437f) and Demonstration preservation programs of the Office of Recapitalization (RECAP). CSMS collects and shares SSNs and PII externally with credit reporting agencies (pursuant to 5 U.S. Code 552a), banks (pursuant to Section 6109 of the Internal Revenue Code), and with the IRS (pursuant to Section 6109 of the Internal Revenue Code).

PURPOSE(S) OF THE SYSTEM:

CSMS is a loan servicing, property management, and accounting system. The purpose of the system is to bill and collect funds owed to HUD/FHA, to provide program information about loan repayment and status, to manage investment of reserve for replace funds, to process and reimburse property managers or vendors for expenses incurred in managing multifamily properties owned by the Department, to track lease information for tenants living in HUD-owned properties, and to account for all transactions on this portfolio.

CSMS is a subsidiary ledger to the FHA's general ledger. CSMS provides servicing and accounting for multifamily loans acquired through the payment of an insurance claims under various Sections of the National Housing Act (12 U.S.C 1701 *et seq.*), including Sections 221(d)(3) and 221 (d)(4), 202, 207, 223(f), 232 and 242, 236, and loans from the Mark2Market and Demonstration preservation programs of the Office of Recapitalization (RECAP). CSMS also provides property management servicing and accounting for HUD-owned properties or mortgagees-in-possession for use by HUD and its property management contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(*e.g.,* all participants of certain HUD Rental Housing Assistance Programs, and/or HUD staff). CSMS collects, processes, and retains information from the following individuals:

- Families receiving Housing assistance from HUD-administered Multifamily programs administered by the Multifamily Property Disposition Division in Fort Worth, TX.
- Multifamily Property Owners established at the time that the FHA loan is executed.
- Vendors to ensure, preserve and protect the property, including but not limited to electricians, plumbers, landscape contractors, security services, advertisers, painters and foreclosure commissioners.
- HUD employees who have CSMS access for entering and tracking information.

CATEGORIES OF RECORDS IN THE SYSTEM:

- *Loan Servicing/Claims:* Mortgagors/Borrowers and authorized contacts' names and addresses, Borrower's TIN/Social Security Numbers, phone numbers; email addresses; banking information (institutional information, routing, account numbers and account type); loan amounts (assigned balance, unpaid principal balance, face amount), interest rates, loan terms, and loan statuses; claim data (amount, expenses, interest paid by HUD, certificate of claim liability); payment and other financial account data such as loan balances, loan history, interest accrued, fees incurred, real estate property information, property taxes and insurance amounts, reserve for replacement escrow accounts and related invested escrows; accounting data including debits and credits to HUD accounts based on transaction events.
- *Vendor Information:* Service fees, late fees, and other billing data; collection history; expenses incurred for foreclosure and acquisition, protection and preservation, attorney fees, special assessments; disbursements for taxes, insurance, and any other miscellaneous disbursements; Mortgagee-in-Possession activity, appraisals, closing costs; asset sales, other loan termination data; UCC and filings by jurisdiction with due dates, filing costs, continuation data.
- *HUD-Owned Property:* Property names, addresses, authorized contacts names and addresses, phone numbers, email addresses; property financial account data such as income and expense; acquisition data; sale data, potential bidders, bid packages, closing activities; vendor/business partner (banking information, TIN/SSN number, routing, account numbers, small business identifier, and other socioeconomic data); accounting data including debits and credits to HUD accounts based on transaction events.
- *HUD-Owned Property Tenant:* Tenants' names, addresses, social security number, marital status, gender, family members; lease information, including rent, subsidies, fees, collections, history, and eviction status.
- *Uniform Commercial Code (UCC)/202:* Property names, addresses, authorized contacts' names and addresses, phone numbers, email addresses; loan maturity date; status; UCC filing by jurisdiction due dates, filing costs, continuation data.

RECORD SOURCE CATEGORIES:

Records in the system are obtained through a variety of HUD/FHA loan documents, completed W–9 forms, investment account enrollment forms, and tenant lease records. Information is entered into the system by HUD/FHA staff or its contractors. This information is not received electronically from another system. The information is released by HUD for entry into CSMS.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses. In addition to those disclosures generally permitted under 5 U.S.C. Section 552A(B) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the Department of Housing and Urban Development as a routine use pursuant to 5 U.S.C. 552A(B)(3), as follows:

1. To appropriate agencies, entities, and persons for disclosures which are compatible with the purpose for which the records in this system were collected, as set forth by Appendix I—HUD's Routine Use Inventory Notice published in the **Federal Register** (80 FR 81837–81840), as follows:

a. To the National Archives and Records Administration or to the General Services Administration for records having enough historical or other value to warrant continued preservation by the United States Government, or for inspection under Title 44 U.S.C. 2904 and 2906. Loan

Servicing and HUD-Owned Property hard-copy documentation is provided.

b. To a congressional office from the record of an individual, in response to an inquiry from that congressional office made at the request of that individual. Loan Servicing/Claims, Vendor, HUD-Owned Property, HUD-Owned Property tenant, and UCC/202 information is provided as requested.

c. To contractors performing or working under a contract with HUD, when necessary to accomplish an agency function related to this system of records. Disclosure requirements are limited to only those data elements considered relevant to accomplishing an agency function. Individuals provided information under these routine use conditions are subject to Privacy Act requirements and disclosure limitations imposed on the Department. Loan Servicing/Claims, Vendor Information, HUD-Owned Property Information, HUD-Owned Property tenant, and UCC/202 is provided as requested.

d. To appropriate Federal, State, and local governments, or persons, pursuant to a showing of compelling circumstances affecting the health or safety or vital interest of an individual or data subject, including assisting such agencies or organizations in preventing the exposure to or transmission of a communicable or quarantinable disease, or to combat other significant public health threats, if upon such disclosure appropriate notice was transmitted to the last known address of such individual to identify the health threat or risk. To a consumer reporting agency, when trying to collect a claim owed on behalf of the Government, in accordance with 31 U.S.C. 3711(e). To Federal, State, and local agencies, their employees, and agents for the purpose of conducting computer matching programs as regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a).

e. To Federal agencies, non-Federal entities, their employees, and agents (including contractors, their agents or employees; employees or contractors of the agents or designated agents); or contractors, their employees or agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or computer matching agreement for the purpose of: (1) Detection, prevention, and recovery of improper payments; (2) detection and prevention of fraud, waste, and abuse in major Federal programs administered by a Federal agency or non-Federal entity; (3) detection of fraud, waste, and abuse by individuals in their operations and programs, but only to the extent that the information shared is necessary and relevant to verify pre-award and prepayment requirements prior to the release of Federal funds, prevent and recover improper payments for services rendered under programs of HUD or of those Federal agencies and non-Federal entities to which HUD provides information under this routine use.

f. To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, or cooperative agreement, when necessary to accomplish an agency function, related to a system of records, for the purposes of statistical analysis and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, or to otherwise support the Department's mission. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits, or privileges of specific individuals. The results of the matched information may not be disclosed in identifiable form.

g. To a recipient who has provided the agency with advance, adequate written assurance that the record provided from the system of records will be used solely for statistical research or reporting purposes. Records under this condition will be disclosed or transferred in a form that does not identify an individual.

h. To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, or cooperative agreement with HUD, when necessary to accomplish an agency function related to a system of records. Disclosure requirements are limited to only those data elements considered relevant to accomplishing an agency function. Individuals provided information under these routine use conditions are subject to Privacy Act requirements and disclosure limitations imposed on the Department.

i. To contractors, experts and consultants with whom HUD has a contract, service agreement, or other assignment of the Department, when necessary to utilize relevant data for the purpose of testing new technology and systems designed to enhance program operations and performance.

j. To appropriate Federal, State, local, tribal, or governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws. To third parties during the course of a law enforcement investigation, to the extent necessary to obtain information pertinent to the investigation, provided the disclosure of such information is appropriate to the proper performance of the official duties of the officer making the disclosure.

k. To a court, magistrate, administrative tribunal, or arbitrator in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, mediation, or settlement negotiations; or in connection with criminal law proceedings; or in response to a subpoena or to a prosecution request when such records to be released are specifically approved by a court provided order. To appropriate Federal, State, local, tribal, or governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency that maintains the record, specifying the particular portion desired and the law enforcement activity for which the record is sought.

l. To the Department of Justice (DOJ) when seeking legal advice for a HUD initiative or in response to DOJ's request for the information, after either HUD or DOJ determine that such information is relevant to DOJ's representatives of the United States or any other components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to DOJ is a use of the information contained in the records that is compatible with the purpose for which HUD collected the records. HUD on its own may disclose records in this system of records in legal proceedings

before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which HUD collected the records.

To the IRS for reporting of payments, forgiveness of debt, and property sales under section 6109 of the Internal Revenue Code. A subset of Loan Servicing/Claims and Vendor Information is provided. To banks holding escrow monies for the purpose of establishing interest bearing accounts and reporting of interest payments to the IRS under section 6109 of the Internal Revenue Code. A subset of Loan Servicing/Claims data is provided. To credit reporting agencies for the purposed of reporting delinquencies under 5 U.S. Code 552a. A subset of Loan Servicing/Claims data is provided. To UCC filing organization for the purpose of filing UCC Article 9 secured party interest on behalf of HUD under the Uniform Commercial Code Article 9. A subset of Uniform Commercial Code (UCC)/202 data is provided.

To appropriate agencies, entities, and persons as necessary when:

1. HUD suspects or has confirmed that there has been a breach of the system of records;

2. HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD (including its information systems, programs, and operations), the Federal Government, or national security; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

4. To another Federal agency or Federal entity, when HUD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

5. Responding to a suspected or confirmed breach or,

6. Preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in CSMS are stored electronically in a secure data center at the primary site in Silver Spring, MD and at a secure data center at the Disaster Recovery Site in Columbus, OH. Encrypted backup tapes are stored in a secure vault at an alternate storage site in Rockville, MD. Paper records are stored in locked file cabinets in limited access areas of a secure facility with 24 hour monitoring and other physical protection measures. Paper records are stored in a secure location and retrieved by staff according to their level of authorization.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Electronic records are retrieved via a variety of CSMS reports and data screens by authorized users of CSMS according to their level of authorization. The primary method of retrieval is Integrated Real Estate Management System (IREMS) id or FHA loan number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Record retention use and disposal practices are governed by 44 U.S.C. Chapter 33. On-line data is kept for the life of the system/contract, based on the contractual requirement to provide full loan histories. Backup and Recovery digital media are destroyed or otherwise rendered irrecoverable per NIST SP 800–88 Rev 1 ''Guidelines for Media Sanitization.'' Hard copy documents held by the contractor are retired per the Performance Work Statement and HUD Handbook 2225.6, Records Disposition Schedules and HUD Handbook 2228.2, General Records Schedules. The system contractor will purge the information at contract termination per the Transition-Out Plan.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are maintained in secured areas within the system. Access is limited to authorized personnel with a need-to-know based on unique user credentials and confidential passwords. Physical entry by unauthorized person is restricted though the use of locks, guards, passwords, and/or other security measures. Policy and standard operating procedures are implemented and disseminated to system users to ensure records are safeguarded, including rules of behavior implementation.

RECORD ACCESS PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact Marcus Smallwood, Acting, Chief Privacy Officer 451 Seventh Street SW, Room 10139, Washington, DC 20410, telephone number (202) 708–3055. When seeking records about yourself from this system of records or any other Housing and Urban Development (HUD) system of records, your request must conform with the Privacy Act regulations set forth in 24 CFR part 16. You must first verify your identity, meaning that you must provide your full name, address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C.1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition, your request should:

a. Explain why you believe HUD would have information on you.

b. Identify which Office of HUD you believe has the records about you.

c. Specify when you believe the records would have been created.

d. Provide any other information that will help the Freedom of Information Act (FOIA), staff determine which HUD office may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying their agreement for you to access their records. Without the above information, the HUD FOIA Office may not conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with regulations.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting contents of records and appealing initial denials appear in 24 CFR part 16, Procedures for Inquiries. Additional assistance may be obtained by contacting John Bravacos, Senior Agency Official for Privacy, 451 Seventh Street SW, Room 10139, Washington, DC 20410, or the HUD Departmental Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410.

NOTIFICATION PROCEDURES:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Privacy Office at the address provided above or to the component's FOIA Officer, whose contact information can be found at *http://www.hud.gov/foia* under ''contact.'' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, HUD, 451 Seventh Street SW, Room 10139, Washington, DC 20410.

EXEMPTIONS PROMOULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Dated: February 8, 2018.

John Bravacos,

Senior Agency Official for Privacy.

[FR Doc. 2018–03393 Filed 2–16–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2017–N004; FXES11140400000–189–FF04E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive written data or comments on the applications at the address given in **ADDRESSES** by March 22, 2018.

ADDRESSES:

Reviewing Documents: Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice (see **DATES**): U.S. Fish and Wildlife Service Regional Office, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (Attn: Karen Marlowe, Permit Coordinator).

Submitting Comments: If you wish to comment, you may submit comments by any one of the following methods:

- *U.S. mail or hand-delivery:* U.S. Fish and Wildlife Service's Regional Office (see above).
- *Email: permitsR4ES@fws.gov.* Please include your name and return address in your email message. If you do not receive a confirmation from the U.S. Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Karen Marlowe, Permit Coordinator, 404–679–7097 (telephone) or 404–679–7081 (fax).

SUPPLEMENTARY INFORMATION: We invite review and comment from local, State, and Federal agencies and the public on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* ESA), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. With some exceptions, the ESA prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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.

PERMIT APPLICATIONS

Permit application No.	Applicant	Species/numbers	Location	Activity	Type of take	Permit action
TE 63577A–2	Mammoth Cave National Park, Mammoth Cave, KY.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*).	Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.	Presence/absence surveys.	Enter hibernacula, salvage dead bats, capture with mist nets or harp traps, handle, identify, collect hair samples, band, radio-tag, PIT-tag, light tag, and wing-punch.	Renewal and Amendment.
TE 57873C–0	Arkansas Natural Heritage Commission, Little Rock, AR.	Yellowcheek darter (*Etheostoma moorei*).	Arkansas	Presence/absence surveys.	Capture, handle, identify, weigh, measure, and release.	New.
TE 102292–13	Jeremy L. Jackson, Richmond, KY.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*).	Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/absence surveys, studies to document habitat use, and population monitoring.	Enter hibernacula or maternity roost caves, salvage dead bats, capture with mist nets or harp traps, handle, identify, collect hair samples, band, radio-tag, light-tag, and wing-punch.	Renewal.

PERMIT APPLICATIONS—Continued

Permit application No.	Applicant	Species/numbers	Location	Activity	Type of take	Permit action
TE 066980–5	J.W. Jones Ecological Research Center, Newton, GA.	Red-cockaded woodpecker (*Picoides borealis*).	Georgia	Population management and monitoring.	Capture, band, construct, and monitor artificial nest cavities and restrictors, translocate, and buccal swab.	Renewal.
TE 56749B–2	Patrick R. Moore, Harrison, AR.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*), Ozark big-eared bats (*Corynorhinus townsendii ingens*), and Virginia big-eared bats (*C. t. virginianus*).	Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin.	Presence/absence surveys, studies to document habitat use, population monitoring, and to evaluate potential impacts of white-nose syndrome or other threats.	Enter hibernacula or maternity roost caves, salvage dead bats, capture with mist nets or harp traps, handle, identify, collect hair samples, band, radio tag, light-tag, swab, and wing-punch.	Renewal.
TE 206872–9	Joy M. O'Keefe, Indiana State University, Terre Haute, IN.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus).*	Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/absence surveys, studies to document habitat use, population monitoring, and to evaluate potential impacts of white-nose syndrome or other threats.	Enter hibernacula or maternity roost caves, salvage dead bats, capture with mist nets or harp traps, handle, identify, collect hair samples, band, radio tag, light-tag, swab, fungal lift tape, and wing-punch.	Renewal.
TE 61573C–0	University of Southern Mississippi, Hattiesburg, MS.	Louisiana quillwort (*Isoetes louisianensis*).	DeSoto National Forest, Mississippi.	Anatomic and genetic studies.	Collect leaf fragments, root tips, megaspores, and a whole individual voucher specimen.	New.
TE 64393C–0	Vanesse Hangen Brustlin, Inc., South Burlington, VT.	Florida bonneted bat (*Eumops floridanus*), gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*).	Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.	Presence/absence surveys.	Capture with mist nets, handle, identify, band, and radio-tag.	New.

PERMIT APPLICATIONS—Continued

Permit application No.	Applicant	Species/numbers	Location	Activity	Type of take	Permit action
TE 94704A–2	Dorothy C. Brown, Woodstock, GA.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*), Carolina northern flying squirrel (*Glaucomys sabrinus coloratus*), and bog turtle (*Clemmys muhlenbergii*).	Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/absence surveys, white-nose syndrome and genetic research, studies to document habitat use, and population monitoring.	Bats: Enter hibernacula or maternity roost caves, salvage, capture with mist nets or harp traps, handle, identify, collect hair samples, band, pit-tag, radio-tag, light-tag, wing-punch, and swab for white-nose syndrome testing; Carolina northern flying squirrel: Capture, handle, ear-tag, pit-tag, radio-tag, collect fur and tissue samples, and conduct den surveys; Bog turtle: Capture, mark, pit-tag, and radio-tag.	Renewal.
TE 56746B–3	Joseph S. Johnson, Ohio University, Athens, OH.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), and northern long-eared bat (*M. septentrionalis*).	Alabama, Ohio, and Pennsylvania.	Presence/absence surveys, studies to examine the impact of fire management and forest thinning on these bat species, and fall migration studies.	Capture with mist nets, handle, identify, band, nano tag, radio-tag, and wing-punch.	Renewal and Amendment.
TE 64767C–0	John H. Collins, Columbia, SC.	Red-cockaded woodpecker (*Picoides borealis*).	Florida, Georgia, North Carolina, and South Carolina.	Population management and monitoring.	Capture, band, construct, install, and monitor artificial nest cavities and restrictors, and translocate.	New.
TE 37900B–1	Sarah A. Lauerman, Gainesville, FL.	Red-cockaded woodpecker (*Picoides borealis*).	Osceola National Forest, Florida.	Population management and monitoring.	Capture, band, monitor nest cavities, and translocate.	Renewal.
TE 94728A–1	Environmental Consulting Operations, Inc., Benton, AR.	American burying beetle (*Nicrophorus americanus*).	Arkansas	Presence/absence surveys.	Trap and release	Renewal.
TE 48579B–4	Ecological Solutions, Inc., Roswell, GA.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), and northern long-eared bat (*M. septentrionalis*).	Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/absence surveys, studies to document habitat use, population monitoring, and white-nose syndrome surveillance.	Enter hibernacula or maternity roost caves, salvage dead bats, capture with mist nets or harp traps, handle, identify, collect hair samples, band, radio-tag, light-tag, swab, and wing-punch.	Renewal.
TE 80381A–1	Department of Defense (Army), Fort Campbell, KY.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), and northern long-eared bat (*M. septentrionalis*).	Fort Campbell, Kentucky.	Presence/absence surveys, studies to document habitat use, and population monitoring.	Enter hibernacula or maternity roost caves, capture with mist nets, band, and radio-tag.	Renewal.

Authority

We provide this notice under section 10(c) of the Act.

Leopoldo Miranda,

Assistant Regional Director, Ecological Services, Southeast Region.

[FR Doc. 2018–03302 Filed 2–16–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–RX–ES–2017–N167]; [FXES11140800000–178–FF08E00000]

Notice of Availability; City of San Diego Vernal Pool Habitat Conservation Plan and Final Environmental Impact Report/ Statement; San Diego County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of final environmental impact report/ environmental impact statement and habitat conservation plan.

SUMMARY: The City of San Diego (applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicant is requesting a permit to incidentally take 2 animal species and seeking assurances for 5 plant species (all are federally listed species) during the term of the proposed 30-year permit. The permit is needed to authorize take of listed animal species (including harm, death, and injury) resulting from covered activities. The proposed Vernal Pool Habitat Conservation Plan (VPHCP) plan area encompasses 206,124 acres in the southwestern portion of San Diego County within the State of California.

Pursuant to the National Environmental Policy Act (NEPA), we advise the public of the availability of the final Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) analyzing the impacts of issuing an incidental take permit based on the City's proposed VPHCP. The EIR portion of the joint document was prepared by the City in compliance with the California Environmental Quality Act (CEQA).

DATES: A record of decision will be signed no sooner than 30 days after the publication of the Environmental Protection Agency (EPA) notice of the final EIS in the **Federal Register**. We must receive any comments by 5 p.m. on March 22, 2018.

ADDRESSES: Please send written comments to Mr. Mendel Stewart, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, California 92008. You may also submit comments by facsimile to (760) 431–5901.

Information and comments related specifically to the final EIR and the California Environmental Quality Act should be submitted to Myra Herrmann, Senior Environmental Planner, City of San Diego Planning Department, 1010 Second Avenue, East Tower, Suite 1200, MS 413, San Diego, CA 92101. You may also submit comments by email to *PlanningCEQA@sandiego.gov*.

FOR FURTHER INFORMATION CONTACT: G. Mendel Stewart, U.S. Fish and Wildlife Service, 2177 Salk Avenue, Suite 250, Carlsbad, California 92008; or by phone at (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Documents available for public review include the final EIR/EIS with response to public comments received on the draft EIR/EIS, VPHCP, and the Implementing Agreement.

• For copies of the documents, please contact the Service by telephone at (760) 431–9440, or by letter to the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Copies of the final EIR/EIS, VPHCP also are available for public review, by appointment, during regular business hours, at the Carlsbad Fish and Wildlife Office or at the City of San Diego. Copies are also on the City's website at *https://www.sandiego.gov/planning/programs/mscp/vphcp*.

Background

Section 9 of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), and Federal regulations prohibit the ''take'' of fish and wildlife species federally listed as endangered or threatened. Take of federally listed fish or wildlife is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct (16 U.S.C. 1538). ''Harm'' includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3). Under limited circumstances, we may issue permits to authorize incidental take, which is defined under the Act as take that is incidental to, and not the purpose of, otherwise lawful activities. ''Take'' under the ESA does not apply to plant species, and is therefore not prohibited under the ESA; however, the plant species identified in the VPHCP are listed on the Federal Permit as Covered Species in recognition of the conservation measures provided for them under the Plan and receive ''No Surprises'' regulatory assurances under the Federal Permit.

The Applicant seeks incidental take authorization for 2 animal species and assurances for 5 plant species. Collectively the 7 listed species are referred to as ''Covered Species'' by the VPHCP and include 2 crustaceans and 5 plant species (all listed). The permit would provide take authorization for both animal species and assurances for all plant species identified by the VPHCP as ''Covered Species.'' Take authorized for listed covered animal species would be effective upon permit issuance.

The proposed permit would include the following 2 federally listed animal species: San Diego fairy shrimp (*Branchinecta sandiegonensis;* endangered) and Riverside fairy shrimp (*Streptocephalus woottoni;* endangered). The proposed permit would include assurances for the following 5 plant species included in the VPHCP: Otay Mesa mint (*Pogogyne nudiuscula;* endangered), San Diego mesa mint (*Pogogyne abramsii;* endangered), spreading navarretia (*Navarretia fossalis;* threatened), San Diego button-celery (*Eryngium aristulatum* var. *parishii;* endangered), and California Orcutt grass (*Orcuttia californica;* endangered).

The VPHCP Plan Area encompasses 206,124 acres and is intended to protect and sustain viable populations of native plant and animal species and their habitats in perpetuity through avoidance, minimization, and mitigation measures. It includes measures necessary to minimize and mitigate the impacts, to the maximum extent practicable, of potential proposed taking of federally listed species to be covered by the VPHCP, and the habitats upon which they depend, resulting from residential, commercial, and other development activities within the proposed plan area. The covered activities under the VPHCP are expected to include residential, commercial, and industrial development; airport operation; road and utility maintenance and construction; trail use; and vernal pool restoration and enhancement.

The VPHCP is a conservation plan for vernal pools and seven threatened and endangered vernal pool species that do not currently have federal coverage under the section 10(a)(1)(B) permit

issued to the City of San Diego in association with its Multiple Species Conservation Program Subarea Plan (MSCP SAP). The VPHCP would be compatible with, and would expand upon, the City's existing MSCP SAP by adding approximately 275 acres of additional lands with vernal pools that are occupied with threatened and endangered vernal pool species. The VPHCP would conserve an additional 8 vernal pool complexes and additional 226 pools (approximately 9% more), totaling 2.8 acres of basin area, over what is currently conserved. Once adopted, vernal pool lands would be subject to the provisions of the VPHCP, in addition to the City's MSCP SAP and other existing land use and biological resource plans, policies, and regulations.

National Environmental Policy Act Compliance

The EIR/EIS analyzes two alternatives in addition to the proposed action (*i.e.,* permit issuance based on the VPHCP) described above. The other alternatives include a no-action (*i.e.,* no permit) alternative and an expanded conservation alternative.

The final EIR/EIS includes all comments we received on the draft EIR/EIS and our response to those comments. After the 30 day waiting period, we will complete a Record of Decision that announces our decision on the action that will be implemented and discusses all factors leading to the decision.

Public Review

Copies of the final EIR/EIS and the VPHCP are available for review (see Availability of Documents). Any comments we receive will become part of the administrative record and may be available to the public. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Michael Senn,

Acting Assistant Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2018–03315 Filed 2–16–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX18GG00995TR00]

Notice of Public Meeting of Scientific Earthquake Studies Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, and the Earthquake Hazards Reduction Authorization Act of 1977, the Scientific Earthquake Studies Advisory Committee (SESAC) will meet as indicated below.

DATES: The SESAC will hold public meetings on March 5–6, 2018. On March 5, 2018, the SESAC will meet from 9:00 a.m. to 5:00 p.m. and on March 6, 2018, from 9:00 a.m. to 2:30 p.m.

ADDRESSES: The SESAC meeting will be held at the Caltech Avery Library, 370 Holliston Avenue, Pasadena, California.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Dr. William Leith, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 905, Reston, Virginia 20192. Dr. Leith can be reached by calling (703) 648–6712 or via email at *wleith@usgs.gov*.

SUPPLEMENTARY INFORMATION: The SESAC advises the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program. The Committee is comprised of members from academia, industry, and State government. In this meeting, the Committee will review the current activities of the USGS Earthquake Hazards Program and discuss future priorities. All meetings are open to the public.

Public Disclosure: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2; 42 U.S.C. 7709.

William Leith,

Senior Science Advisor for Earthquake and Geologic Hazards.

[FR Doc. 2018–03286 Filed 2–16–18; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Geological Survey

National Geospatial Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of renewal of National Geospatial Advisory Committee.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, notice is hereby given that the Secretary of the Interior has renewed the National Geospatial Advisory Committee (Committee).

DATES: Comments regarding the renewal of this Committee must be submitted not later than March 7, 2018.

ADDRESSES: John Mahoney, U.S. Geological Survey, 900 First Avenue, Suite 800, Seattle, WA 98104.

FOR FURTHER INFORMATION CONTACT: John Mahoney, U.S. Geological Survey; phone: 206–220–4621; email: *jmahoney@usgs.gov*.

SUPPLEMENTARY INFORMATION: The Committee provides advice and recommendations to the Federal Geographic Data Committee (FGDC), through the FGDC Chair (the Secretary of the Interior or designee), related to the management of Federal geospatial programs, the development of the National Spatial Data Infrastructure (NSDI), and the implementation of Office of Management and Budget (OMB) Circular A–16 and Executive Order 12906. The Committee will review and comment upon geospatial policy and management issues and will provide a forum to convey views representative of non-Federal partners in the geospatial community.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Certification: I hereby certify that the National Geospatial Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by Office of Management and Budget (OMB) Circular A–16 (Revised), ''*Coordination of Geographic Information and Related Spatial Data Activities.*''

Authority: 5 U.S.C. Appendix 2.

Ryan Zinke,

Secretary of the Interior.

[FR Doc. 2018–03295 Filed 2–16–18; 8:45 am]

BILLING CODE 4311–AM–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–709 (Fourth Review)]

Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Germany

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on seamless carbon and alloy steel standard, line, and pressure pipe from Germany would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted this review on August 1, 2017 (82 FR 35821, August 1, 2017) and determined on November 6, 2017 that it would conduct an expedited review (82 FR 56267, November 20, 2017).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on February 13, 2018. The views of the Commission are contained in USITC Publication 4760 (February 2018), entitled *Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Germany,* Inv. No. 731–TA–709 (Fourth Review).

By order of the Commission.

Issued: February 14, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–03359 Filed 2–16–18; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Jump Rope Systems Products, DN 3296;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Jump Rope Systems, LLC on February 13, 2018. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain jump rope systems products. The complaint names as a respondent: Suzhou Everise Fitness Co., Ltd. of China. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by

noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3296) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electonic Filing Procedures, Electronic Filing Procedures).[1] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: February 13, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–03330 Filed 2–16–18; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–578 and 731–TA–1368 (Final)]

100- to 150-Seat Large Civil Aircraft From Canada; Determinations

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of 100- to 150-seat large civil aircraft from Canada, provided for in subheading 8802.40.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of Canada.

Background

The Commission, pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)), instituted these investigations effective April 27, 2017, following receipt of a petition filed with the Commission and Commerce by The Boeing Company, Chicago, Illinois. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of 100- to 150-seat large civil aircraft from Canada were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 27, 2017 (82 FR 49850).[2] The hearing was held in Washington, DC, on December 18, 2017, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on February 13, 2018. The views of the Commission are contained in USITC Publication 4759 (February 2018), entitled *100- to 150-Seat Large Civil Aircraft from Canada: Investigation Nos. 701–TA–578 and 731–TA–1368 (Final).*

By order of the Commission.

Dated: February 13, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–03317 Filed 2–16–18; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Due to the lapse in appropriations and ensuing cessation of Commission operations, these investigations conducted under authority of Title VII of the Tariff Act of 1930 accordingly have been tolled pursuant to 19 U.S.C. 1671d(b)(2), 1673d(b)(2).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Robert C. Vidaver, M.D.; Decision and Order

On July 18, 2017, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Robert C. Vidaver, M.D. (hereinafter, Respondent), of Henniker, New Hampshire. GX 2. The Show Cause Order proposed the revocation of Respondent's Certificate of Registration on the ground that Respondent is ''currently without authority to handle controlled substances in the State of New Hampshire,'' the State in which he is registered. GX 2, at 2 (citing 21 U.S.C. 824(a)(3)).

As to the Agency's jurisdiction, the Show Cause Order alleged that Respondent holds DEA Certificate of Registration No. FV0660565, which authorizes him to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 304 Highland Drive, Henniker, New Hampshire 03242. GX 2, at 1. *See also* GX 1 (Certification of Registration History). The Show Cause Order alleged that this registration expires on May 31, 2019. GX 2, at 1. *See also* GX 1, at 1.

As the substantive ground for the proceeding, the Show Cause Order alleged that Respondent is ''without

authority to handle controlled substances in the State of New Hampshire, the state in which . . . [he is] registered with DEA.'' GX 2, at 1. It further alleged that, ''[o]n July 2, 2015, the New Hampshire Board of Medicine issued an Order on Practice Restrictions prohibiting . . . [Respondent] from prescribing or administering controlled substances . . . [and t]hus, . . . [Respondent is] currently without authority to handle controlled substances in the State of New Hampshire.'' GX 2, at 1. *See also* GX 3 (New Hampshire Board of Medicine Order on Practice Restrictions (hereinafter, Practice Restrictions Order)) and GX 6 (New Hampshire Online Licensing information concerning Respondent) (''7/2/15—Order on Practice Restrictions. License is active pending further Board Action.''). The Show Cause Order asserted that ''DEA must revoke . . . [his] DEA registration based on . . . [his] lack of authority to handle controlled substances in the State of New Hampshire.'' GX 2, at 1–2 (citing 21 U.S.C. 824(a)(3) and 21 CFR 1301.37(b)).

The Show Cause Order notified Respondent of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. GX 2, at 2 (citing 21 CFR 1301.43). The Show Cause Order also notified Respondent of the opportunity to submit a corrective action plan. GX 2, at 2 (citing 21 U.S.C. 824(c)(2)(C)).

On July 27, 2017, a DEA Diversion Investigator personally served Respondent with the Show Cause Order. GX 4, at 1 (Declaration of Service of Order to Show Cause dated October 3, 2017).

By letter dated August 17, 2017 addressed to the Office of the [DEA] Administrative Law Judges and copied to Respondent, James P. O'Rourke, Jr., Esq., advised that ''upon advice of counsel, Dr. Vidaver is exercising his right against self-incrimination pursuant to the New Hampshire and United States Constitution . . . [and a]s such, Dr. Vidaver will *not* be appearing at the September 12, 2017 hearing nor offering a statement regarding the instant Order to Show Cause.'' GX 5, at 1 (Letter of James P. O'Rourke, Jr., Esq.) (emphasis in original).

On October 12, 2017, the Government submitted a Request for Final Agency Action including an evidentiary record to support the Show Cause Order's allegation (hereinafter, RFAA).

I find that the Government's service of the Show Cause Order on Respondent was legally sufficient.

I find that the letter from Mr. O'Rourke stated that Respondent was exercising his Federal and State Constitutional rights against self-incrimination and, therefore, will not appear at a hearing or file a written statement. Based on the letter from Respondent's counsel, I find that Respondent has waived his right to request a hearing, to submit a written statement, and to submit a corrective action plan.

I issue this Decision and Order based on the record submitted by the Government. 21 CFR 1301.43(e).

Findings of Fact

Respondent's DEA Registration

Respondent currently holds DEA practitioner registration FV0660565 authorizing him to dispense controlled substances in schedules II through V at the address of 304 Highland Drive, Henniker, New Hampshire 03242. GX 1, at 1; GX 2, at 1. This registration expires on May 31, 2019. *Id.*

The Status of Respondent's Authority To Dispense Controlled Substances in New Hampshire

On July 2, 2015, the Administrator and Authorized Representative of the New Hampshire Board of Medicine signed a Practice Restrictions Order granting Respondent's request to continue the Adjudicatory/Disciplinary Proceeding hearing concerning him ''until the resolution of . . . [Respondent's] criminal case.'' GX 3, at 2. The terms of the Practice Restrictions Order continuance included that Respondent ''will refrain from prescribing or administering any controlled substances.'' *Id.* The Government represented in the RFAA that ''Respondent's New Hampshire medical license prohibits him from prescribing or administering controlled substances'' and ''Registrant is without state authority to handle controlled substances in New Hampshire, the state where he is registered with DEA.'' RFAA, at 3.

Accordingly, I find that Respondent currently is without authority to prescribe or administer any controlled substance in New Hampshire, the State in which he is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA), ''upon a finding that the registrant . . . has had his State License or registration suspended [or] revoked by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371, 71,371–72 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner' [to] mean[ ] a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess State authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices. *See, e.g., Hooper,* 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104, 51,105 (1993); *Bobby Watts,* 53 FR 11,919, 11,920 (1988); *Blanton,* 43 FR at 27,617.

In this case, the New Hampshire Board of Medicine ordered practice restrictions on Respondent when it granted Respondent's request for a continuance of the licensee disciplinary proceedings against him. The New Hampshire Board of Medicine Practice Restrictions Order granted the continuance Respondent requested ''to the extent'' that Respondent ''refrain[s] from prescribing or administering any controlled substances.'' GX 3, at 2.

Consequently, Respondent is not currently authorized to handle controlled substances in the State of

New Hampshire, the State in which he is registered with the Agency and, therefore, he is not entitled to maintain his DEA registration. *Hooper,* 76 FR at 71,371–72; *Blanton,* 43 FR at 27,617. Accordingly, I will order that Respondent's registration be revoked and that any pending application for the renewal or modification of his registration be denied. 21 U.S.C. 824(a)(3), *id.* § 823(f).

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration FV0660565 issued to Robert C. Vidaver, M.D., be, and it hereby is, revoked. Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b), I further order that any pending application of Robert C. Vidaver, M.D., to renew or modify this registration, as well as any other pending application by him for registration in the State of New Hampshire, be, and it hereby is, denied. This order is effective March 22, 2018.

Dated: February 6, 2018.

Robert W. Patterson,

Acting Administrator.

[FR Doc. 2018–03303 Filed 2–16–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 15–27]

Trinity Pharmacy I; Order Terminating Registration

On July 10, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Trinity Pharmacy I (hereinafter ''Trinity I'' or Respondent), which proposed the revocation of its DEA Certificate of Registration BT9848170, pursuant to which it is authorized to dispense controlled substances in schedules II through V as a retail pharmacy, at the registered location of 11130 Seminole Boulevard, Seminole, Florida. Administrative Law Judge Exhibit (ALJ Ex.) 1a, at 1. As grounds for the proposed action, the Show Cause Order alleged that Respondent's ''continued registration is inconsistent with the public interest.'' *Id.* (citing 21 U.S.C. 823(f) and 824(a)(4)). The Show Cause Order notified Respondent of its right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence for failing to elect either option. *Id.* at 15.

In a letter from its counsel dated August 12, 2015, Trinity I requested a hearing on the allegations. ALJ Ex. 2a. The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, CALJ), who conducted a hearing on the allegations on January 4–8, 2016, in Arlington, Virginia, and on January 11–12, 2016, in Tampa, Florida. On May 12, 2016, the CALJ issued and served his Recommended Decision, which included the CALJ's recommendation that I revoke Respondent's registration and deny any pending applications for renewal. Recommended Decision (R.D.), at 66.[1] On June 2, 2016, the Government and Respondent each filed Exceptions to the CALJ's Recommended Decision. Thereafter, the record was forwarded to me for final agency action.

On March 22, 2017, during the course of reviewing the record, my office received a ''Notice of Trinity Pharmacy I Change of Business Status'' (hereinafter, ''Notice'') from the Government. In its Notice, the Government ''informs the Acting Administrator of the change of business status for'' Trinity I. Notice, at 1. Specifically, the Government states that, on March 17, 2017, counsel for Trinity I sent an email to the Group Supervisor of the Agency's Tampa, Florida District Office, which in turn attached a copy of a February 27, 2017 letter to the DEA's Registration Unit stating that Trinity I ''desires to discontinue business activities'' and enclosed ''the original DEA Certificate of Registration for Cancellation.'' Feb. 27, 2017 Letter to DEA Registration Unit from Dale R. Sisco, Counsel for Trinity I, attached as Exhibit B to Notice, at 1. The Government attached to its Notice a copy of the email, the letter, and a copy of Trinity I's ''original DEA Certificate of Registration'' sent to the Agency. Notice at 1; Exhibits A–B to Notice. It is undisputed that Trinity I surrendered its ''original DEA Certificate of Registration'' to the Agency.

Based on these facts, I find that Respondent has surrendered its DEA registration certificate. Pursuant to 21 CFR 1301.52(a), ''the registration of any person . . . shall terminate, without any further action by the Administration, if and when such person . . . surrenders a registration.'' As a result, I find that Respondent's registration terminated upon its surrender to the Agency, and accordingly, that the Show Cause proceeding is now moot.[2]

Pursuant to the authority vested in me under 5 U.S.C. 554(e) and 28 CFR 0.100(b), I declare that DEA Certificate of Registration BT9848170, issued to Trinity I, terminated upon its surrender to the Agency. Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I further order that the Order to Show Cause issued to Trinity I be, and it hereby is, dismissed. This Order is effective immediately.

Dated: February 6, 2018.

Robert W. Patterson,

Acting Administrator.

[FR Doc. 2018–03297 Filed 2–16–18; 8:45 am]

BILLING CODE 4410–09–P

[1] Trinity Pharmacy II (''Trinity II''), located in Clearwater, Florida, was served with a separate July 10, 2015 Order to Show Cause by the Government. ALJ Ex. 1b. Although the CALJ eventually ordered the consolidation of the evidentiary hearings for Trinity I and Trinity II, *see* ALJ Ex. 10 at 2, the CALJ wrote separate recommendations regarding each Respondent, and I therefore will issue a separate Order regarding the disposition of the Show Cause Order directed at Trinity II.

[2] In its Notice, the Government stated that it forwarded the February 27, 2017 correspondence from Trinity I's counsel for my consideration because it is ''unsure of how Trinity 'disposed of' the 'controlled substances in the possession of the pharmacy,' when it disposed of them, and if applicable, to whom the controlled substances were provided.'' Notice at 2 (quoting Ex. B to Notice, at 1). This uncertainty, in turn, is based solely on the Government's observation that Trinity I's counsel cited to federal regulations in his letter that ''do[ ] not exist.'' *Id.* Specifically, Trinity I's counsel stated that Trinity I ''desires to discontinue business activities.'' Ex. B to Notice, at 1. As a result, he enclosed Trinity I's ''original DEA Certificate of Registration'' ''as required by 21 CFR Section 1307.14'' and stated that Trinity I ''does not possess any unexecuted Order forms,'' and ''[a]ll controlled substances in the possession of the pharmacy have been disposed of in accordance with 21 CFR Section 1307.21.'' *Id.*

The Government observed, correctly, that ''21 CFR Section 1307.14'' and ''21 CFR Section 1307.21'' ''do[ ] not exist,'' and that the federal regulation setting forth the procedures a DEA registrant must follow when it desires to discontinue business activities altogether is 21 CFR 1301.52(c). Notice, at 2. However, the Government failed to note that the provision cited by Trinity I's counsel related to the disposal of controlled substances (21 CFR 1307.21) *did* exist until it was re-codified and amended on September 9, 2014 to what is now 21 CFR 1301.52(c) and part 1317 of Title 21 of the Code of Federal Regulations. *See generally* Disposal of Controlled Substances Final Rule, 79 FR 53520 (Sept. 9, 2014). Most importantly, the Government offered no *factual* basis for why it is ''unsure'' of how Trinity I disposed of its controlled substances when Trinity I discontinued its business activities. Nevertheless, if the Government has a factual basis to believe that Trinity I violated the Controlled Substances Act when it disposed of its controlled substances as a result of its discontinued business activities, then I direct the Government to investigate such violations immediately.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Johnson Matthey Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before April 23, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on November 09, 2017, Johnson Matthey Inc., 2003 Nolte Drive, West Deptford, NJ 08066, applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Dihydromorphine	9145	I
Difenoxin	9168	I
Propiram	9649	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Nabilone	7379	II
Cocaine	9041	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Diphenoxylate	9170	II
Ecgonine	9180	II
Hydrocodone	9193	II
Meperidine	9230	II
Methadone	9250	II
Methadone intermediate	9254	II
Morphine	9300	II
Thebaine	9333	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to manufacture the above-listed controlled substances in bulk for sale to its customers. Thebaine (9333) will be used to manufacture other controlled substances for sale in bulk to its customers.

In reference to drug codes 7360 (marihuana), and 7370 (THC), the company plans to bulk manufacture these drugs as synthetics. No other activities for these drug codes are authorized for this registration.

Dated: February 6, 2018.

Susan A. Gibson,

Deputy Assistant Administrator.

[FR Doc. 2018–03293 Filed 2–16–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Taylor Animal Shelter; Order

On October 4, 2017, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration, issued an Order to Show Cause proposing the revocation of the DEA Certificate of Registration issued to Taylor Animal Shelter of Taylor, Michigan (Respondent). GX 1, at 1. The basis of the proposed action was that, on June 30, 2017, Respondent's Michigan Controlled Substance Sodium Pentobarbital Facility license lapsed, and thus, it was ''currently without authority to handle controlled substances in the State of Michigan, the [S]tate in which [it is] registered with the'' Agency. *Id.; see also* 21 U.S.C. § 824(a)(3).

Following service of the Show Cause Order, Respondent submitted a timely written statement of position with exhibits while waiving its right to a hearing. In its position statement, Respondent represented that its state controlled substances registration was renewed on October 30, 2017. Resp.'s Statement at 3, ¶ 10. Respondent attached a copy of a document which states that it is a ''Sodium Pentobarbital Permit for Practice of Animal Euthanasia (Facility Permit).'' Resp.'s Statement, at Exhibit E. While much of this document is unreadable, and it is unclear from the document when this permit was issued or expires, Respondent provided an affidavit of the Operations Manager for the Department of Public Works of the City of Taylor, Michigan, which states that on October 30, 2017, he received the renewed state license for the facility. Affidavit of Matt Bonza, at 2. Moreover, the Government does not dispute that the facility has re-obtained state authority to dispense controlled substances. Request for Order Dismissing Order to Show Cause, at 2.

As the Government acknowledges, the sole basis for seeking revocation of Respondent's DEA registration was ''its lack of state authority to handle controlled substances'' and ''this ground for revocation no longer exists.'' *Id.* The Government thus seeks an order dismissing the Order to Show Cause. *Id.* at 3. Accordingly, I will grant the Government's request and dismiss the Order to Show Cause. *Id.*

Order

Pursuant to the authority vested in me by 21 U.S.C. 824 and 28 CFR 0.100(b), I order that the Order to Show Cause issued to Taylor Animal Shelter be, and it hereby is, dismissed. This Order is effective immediately.

Dated: February 6, 2018.

Robert W. Patterson,

Acting Administrator.

[FR Doc. 2018–03298 Filed 2–16–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

James E. Ranochak, M.D.; Decision and Order

On September 11, 2017, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration, issued an Order to Show Cause to James E. Ranochak, M.D. (hereinafter, Registrant), of Fort Wayne, Indiana. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration No. AR1591913, on the ground that he ''do[es] not have authority to handle controlled substances in . . . Indiana, the [S]tate in which [he is] registered with the'' Agency. GX 2, at 1 (citing 21 U.S.C. 823(f) and 824(a)(3)).

As to the jurisdictional basis of the proceeding, the Show Cause Order alleged that Registrant is registered ''as a practitioner in Schedules II [through]

V,'' under the above registration number, at the location of 3488–B Stellhorn Road, Fort Wayne, Indiana. *Id.* The Order further alleged that this registration does not expire until April 30, 2020. *Id.*

As to the substantive ground for the proceeding, the Show Cause Order alleged that ''[o]n August 8, 2017, the Indiana Medical Licensing Board summarily suspended [Registrant's] medical license for 90 days, effective July 27, 2017'' and ''[t]his order remains in effect.'' *Id.* The Order thus alleged that Registrant is ''without authority to handle controlled substances in the State . . . in which [he is] registered.'' *Id.* The Order then asserted that Registrant is ''required to possess authority from a state in order to obtain or retain a DEA registration,'' and that ''[c]onsequently, . . . DEA must revoke'' his registration. *Id.* at 2 (citations omitted).

The Show Cause Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* (citing 21 CFR 1301.43). The Order also notified Registrant of his right to submit a corrective action plan in accordance with 21 U.S.C. 824(c)(2)(C). *Id.* at 2–3.

On September 14, 2017, a DEA Diversion Investigator went to Registrant's home address and personally served the Show Cause Order on Registrant. GX 3, at 2 (affidavit of DI). Moreover, in its Request for Final Agency Action which it submitted on November 9, 2017, the Government represents that since the date of service of the Show Cause Order, Registrant has not requested a hearing, nor submitted a written statement or a corrective action plan. Based on the DI's affidavit and the Government's representation, I find that more than 30 days have now passed since the date of service of the Show Cause Order and that Registrant has neither requested a hearing nor submitted a written statement or corrective action plan. I therefore find that Registrant has waived his right to request a hearing or submit a written statement and issue this Decision and Order based on relevant evidence submitted by the Government [1] and matters of which I take official notice. 21 CFR 1301.43(d)–(e). I make the following findings.

Findings of Fact

Registrant is the holder of DEA Certificate of Registration No. AR1591913, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 3488–B Stellhorn Road, Fort Wayne, Indiana. GX 1. This registration does not expire until April 30, 2020. *Id.*

Registrant is also the holder of medical license No.01026732A issued by the Medical Licensing Board of Indiana (hereinafter, the Board). GX 3A (Order Granting Summary Suspension), at 1. However, on June 22, 2017, Registrant was indicted in the United States District Court for the Northern District of Indiana on 10 counts of Conspiracy to Commit Healthcare Fraud and Distributing a Controlled Substance. *Id.* at 2. Based on the indictment, on July 27, 2017, the Board summarily suspended Registrant's medical license for 90 days. *Id.* On December 7, 2017, the Board extended the suspension for an additional 90 days. *See* GX 4, at 3 (Order Granting Summary Suspension Extension, at 2 (Dec. 20, 2017)). Also, according to the Board's website (of which I take official notice),[2] the suspension remains in effect as of the date of this Decision an Order; the website also reflects that Registrant's CSR-Physician License Nos. 01026732B and 01026732C have both expired.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA), ''upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining *and maintaining* a practitioner's registration. *See, e.g., James L. Hooper,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton,* 43 FR 27616 (1978).

The Agency's rule derives from the text of two other provisions of the CSA: Section 802(21), which defines the term ''practitioner,'' and section 823(f), which sets forth the registration requirements applicable to practitioners. Notably, in section 802(21), Congress defined ''the term 'practitioner' [to] mean [ ] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). The text of this provision makes clear that a physician is not a practitioner within the meaning of the CSA if he is not ''licensed, registered or otherwise permitted, by the jurisdiction in which he practices . . . to dispense [or] administer . . . a controlled substance in the course of professional practice.'' *Id.*

To the same effect, Congress, in setting the requirements for obtaining a practitioner's registration, directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Thus, based on these provisions, the Agency held nearly forty years ago that ''[s]tate authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance *and maintenance* of a Federal controlled substances registration.'' *Blanton,* 43 FR at 27617 (revoking physician's registration based on one-year suspension of his state license) (emphasis added).

Here, based on the Summary Suspension Order of Registrant's medical license as well as the information that both of Registrant's state controlled substance licenses have expired, I find that Registrant is currently without authority to dispense controlled substances in Indiana, the State in which he is registered with DEA. *See* Ind. Code § 35–48–3–3(b) (''Every person who dispenses . . . any controlled substance within Indiana must have a registration issued by the [pharmacy] board in accordance with its rules.''); *see also* Ind. Code § 25–22.5–1–1.1(a)(1)(B) (the ''[p]ractice of medicine'' includes the ''prescription or administration of any form of treatment, without limitation''); *id.* § 25–22.5–1–1(g) (defining ''[ ]physician'' to ''mean any person . . . who holds [a] valid unlimited license to practice medicine'' in the state); *id.* § 25–22.5–8–1 (''It is unlawful for any person to practice medicine . . . in this state without holding a license or permit to do so, as provided in this article.'').

Moreover, because ''the controlling question'' in a proceeding brought

[1] On January 12, 2018, the Government submitted a Supplement to its Request for Final Agency Action which contained an additional exhibit, this being a December 20, 2017 Order of the Medical Licensing Board.

[2] *See* 5 U.S.C. 556(e).

under 21 U.S.C. 824(a)(3) is whether the holder of a DEA registration ''is currently authorized to handle controlled substances in the [S]tate,'' *Hooper,* 76 FR at 71371 (quoting *Anne Lazar Thorn,* 62 FR 12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner has lost his state authority by virtue of the State's use of summary process and the State has yet to provide a hearing to challenge the suspension. *Bourne Pharmacy,* 72 FR 18273, 18274 (2007); *Wingfield Drugs,* 52 FR 27070, 27071 (1987). Thus, it is of no consequence that the Indiana Board has employed summary process in suspending Registrant's state license. What is consequential is that Registrant is no longer currently authorized to dispense controlled substances in Indiana, the State in which he is registered. I will therefore order that his registration be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AR1591913, issued to James E. Ranochak, M.D., be, and it hereby is, revoked. This Order is effective immediately.[3]

Dated: February 6, 2018.

Robert W. Patterson,

Acting Administrator.

[FR Doc. 2018–03301 Filed 2–16–18; 8:45 am]

BILLING CODE 4410–09–P

[3] For the same reasons that led the Indiana Board to summarily suspend Registrant's medical license (his indictment in federal district court on 10 counts of Conspiracy to Commit Health Care Fraud and Distributing a Controlled Substance), I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 17–37]

Kenneth N. Woliner, M.D.; Decision and Order

On June 6, 2017, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Kenneth N. Woliner, M.D. (Respondent), of Boca Raton, Florida. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration No. BW6830500 on the ground that he ''do[es] not have authority to handle controlled substances in the State of Florida, the [S]tate in which [he is] registered with the DEA.'' Order to Show Cause, at 1 (citing 21 U.S.C. 823(f) and 824(a)(3)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Respondent is the holder of Certificate of Registration No. BW6830500, pursuant to which he is authorized to dispense controlled substances as a practitioner in schedules II through V, at the registered address of 9325 Glades Road, Suite 104, Boca Raton, Florida. *Id.* The Order also alleged that this registration does not expire until May 31, 2018. *Id.*

Regarding the substantive grounds for the proceeding, the Show Cause Order alleged that on December 29, 2016, the Florida Board of Medicine ''revoked [his] authority to practice medicine,'' and he is therefore ''without authority to handle controlled substances in Florida, the [S]tate in which [he is] registered with the DEA.'' *Id.* Based on his ''lack of authority to [dispense] controlled substances in . . . Florida,'' the Order asserted that ''DEA must revoke'' his registration. *Id.* (citing 21 U.S.C. 823(f)(1) and 824(a)(3)).

The Show Cause Order notified Respondent of (1) his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, (2) the procedure for electing either option, and (3) the consequence for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The Show Cause Order also notified Respondent of his right to submit a corrective action plan (hereinafter, CAP) to the Assistant Administrator, Diversion Control Division, and the procedure for doing so. *Id.* at 2–3.

On July 6, 2017, Respondent filed a letter with the Office of Administrative Law Judges pursuant to which he requested a hearing on the allegations of the Show Cause Order. Letter from Respondent to Hearing Clerk (dated July 3, 2017) (hereinafter, Hearing Request). In his letter, Respondent did not dispute that his Florida medical license ''was revoked.'' *Id.* at 1. He maintained, however, that his license ''was revoked for issues not relating to controlled substances; and that the revocation . . . is currently under appeal at Florida's District Court of Appeal.'' *Id.* Respondent also advised that he ''has not been convicted of any crime, much less one involving controlled substances.'' *Id.* Also on July 6, 2017, Respondent submitted his CAP by letter to the Assistant Administrator, Diversion Control Division. Letter from Respondent to Assistant Administrator Louis J. Milione (dated July 3, 2017). In his CAP, Respondent explained:

> My corrective action plan is to have my case overturned on appeal. The Initial Brief on the Merits was filed on 6/7/2017. Barring the Court granting extensions of time (if filed), the Department of Health is was [sic] required to file their Answer Brief by 6/27/2017, and our Reply is due 20 days after service of the Answer Brief.
>
> It would seem prudent for the DEA to ''postpone the proceedings'' until the 1st District Court of Appeal rules on this matter.

Id. at 1.

Upon receipt of Respondent's Hearing Request and CAP, the matter was placed on the docket of the Office of Administrative Law Judges and assigned to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, CALJ). On July 6, 2017, the CALJ issued an order noting that Respondent was appearing *pro se* and advised him ''that he has the right to seek representation by a qualified attorney at his own expense.'' Order Directing the Filing of Government Evidence of Lack of State Authority Allegation and Briefing Schedule, at 1 & n.1 (citing 21 CFR 1316.50). The CALJ also ordered the Government to file evidence to support the allegation that Respondent lacks state authority to handle controlled substances and an accompanying motion for summary disposition no later than July 18, 2017. *Id.* The CALJ further directed Respondent to file his response to any summary disposition motion no later than August 1, 2017. *Id.* at 2.

On July 6, 2017, the Acting Assistant Administrator received Respondent's CAP letter. *See* Letter from Acting Assistant Administrator Demetra Ashley to Respondent (dated July 11, 2017) (hereinafter CAP Rejection Ltr), at 1. However, on July 10, 2017, before the Acting Assistant Administrator had ruled on Respondent's CAP (and eight days before its summary disposition motion was due), the Government filed its Motion for Summary Disposition. In its Motion, the Government argued that it is undisputed that the Florida Board of Medicine revoked Respondent's Florida medical license. Government's Motion for Summary Disposition (Govt. Mot.), at 2. The Government further argued ''that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for both obtaining and maintaining a practitioner's registration'' under the Controlled Substances Act (CSA). *Id.* at 3 (citation omitted). As support for its summary disposition request, the Government attached, *inter alia,* a certified copy of the Florida Board of Medicine's December 29, 2016 ''Final Order'' revoking Respondent's license to

practice medicine in the State of Florida. *See* Govt. Mot., Appendix (Appx.) B, at 13.[1] On July 11, 2017, the Acting Assistant Administrator rejected Respondent's CAP and further ''determined there is no potential modification of your [ ]CAP that could or would alter my decision in this regard.'' CAP Rejection Ltr, at 1.

On August 1, 2017, Respondent filed a responsive pleading that opposed the Government's Motion and requested a stay in the proceedings. Respondent's Opposition to Government's Motion for Summary Disposition (hereinafter, Resp. Opp. or Opposition). Although Respondent did not dispute that his medical license had been revoked by Florida's Board of Medicine, he contended that this fact does not categorically support the revocation of his registration. *Id.* at 6 (citing *Joe W. Morgan, D.O.,* 78 FR 61961 (2013)). He also argued that revoking his registration without an administrative hearing violates his rights under the Fifth Amendment's Due Process Clause. *Id.* He further argued that ''the Government has not shown that Respondent's DEA registration is inconsistent with the public interest by any factor in § 824(a)(4) because, *inter alia,* (1) the ''State of Florida has not made a recommendation regarding Respondent's ability to prescribe controlled substances,'' (2) Respondent has not been charged or convicted of a federal or state crime related to controlled substances, and (3) that ''[t]he disciplinary event in question did not relate to controlled substances in any fashion.'' *Id.* at 9. Finally, Respondent argued that the Agency should delay any decision to revoke his registration because the Government would not be prejudiced and he believes that he ''is very much likely to prevail in his appeal'' before Florida's 1st District Court of Appeal, which he ''expected'' would decide the merits of his appeal ''no later than September 19, 2017.'' *Id.* at 10–12.

The CALJ rejected Respondent's request for a stay, noting that ''revocation 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's action and at which he . . . may ultimately prevail.'' Order Denying the Respondent's Request for Stay, Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (R.D.), at 4 (internal quotations and citations omitted). The CALJ also concluded that Respondent had no constitutional right to a hearing before the Agency because he ''was apparently afforded a full hearing, where he was represented by counsel, before the [Florida] Board revoked his medical license.'' *Id.* at 4 & n.3. The CALJ noted that DEA has previously held ''that a stay in administrative enforcement proceedings is 'unlikely to ever be justified' due to ancillary proceedings involving the Respondent.'' *Id.* at 4 (quoting *Grider Drug #1 & Grider Drug #2,* 77 FR 44070, 44104 n.97 (2012)).[2] The CALJ also rejected Respondent's claim that the loss of his Florida medical license categorically supports the revocation of his DEA registration and found Respondent's reliance on the *Joe W. Morgan, D.O.* case and others to be misplaced. *Id.* at 6 n.9.

The CALJ then found summary disposition appropriate in this case because ''no dispute exists over the fact that the Respondent currently lacks state authority to handle controlled substances in Florida due to the Board['s] Order dated December 29, 2017, which revoked his state license to practice medicine.'' *Id.* at 7. Reasoning that ''[b]ecause . . . Respondent lacks state authority at the present time . . . he is not entitled to maintain his DEA registration,'' the CALJ granted the Government's request for summary disposition and recommended that I revoke Respondent's registration and deny any pending applications. *Id.*

Neither party filed exceptions to the CALJ's Recommended Decision.[3] Thereafter, the record was forwarded to my Office for Final Agency Action. Having reviewed the record, I adopt the CALJ's factual finding that Respondent's medical license has been revoked and his ultimate conclusion that Respondent does not hold authority under Florida law to handle controlled substances, the State in which he holds his registration with the Agency, and is thus not entitled to maintain his registration. I also adopt the CALJ's ruling rejecting Respondent's request for a stay of this proceeding. I further adopt the CALJ's recommendation that I revoke his registration and deny any pending application. I make the following factual findings.

Findings of Fact

Respondent is a holder of DEA Certificate of Registration No. BW6830500, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the address of Holistic Family Medicine, LLC, 9325 Glades Road, Suite 104, Boca Raton, Florida. Govt. Mot., Appx. A. This registration does not expire until May 31, 2018. *Id.*

On December 29, 2016, the Florida Board of Medicine issued a final order revoking Respondent's license to practice medicine in the State of Florida. Govt. Mot., Appx. B, at 13. The Florida Board adopted the recommended order of the state administrative law judge who conducted a hearing at which Respondent was present and represented by counsel. *Id.* at 1. The Board considered the Recommended Order, Exceptions to the Recommended Order and Response to Exceptions, and adopted the conclusions of law set forth in the Recommended Order,[4] and ordered that Respondent's Florida license to practice medicine be revoked as of December 29, 2016. *Id.* at 13.

On August 28, 2017, the 1st District Court of Appeals of Florida affirmed the decision and final order of the Florida Department of Health revoking Respondent's license to practice medicine, and denied rehearing on October 9, 2017. *Kenneth Woliner, M.D.* v. *Department of Health,* No. 1D17–682, slip op. at 1 (Fla. Dist. Ct. App. 1st District Aug. 28, 2017), *and reh'g denied* 2017 WL 3696794 (October 9, 2017). I take official notice of this unpublished decision[5] and find that Respondent

[1] The Government also attached a Declaration from a Diversion Investigator assigned to DEA's West Palm Beach Office stating that the Florida Board's Order attached to the Government's motion for summary decision ''is a certified copy of the documents I obtained from the Florida Board of Medicine.'' Govt. Mot., Appx. C, at 1.

[2] I agree with this statement of the Agency's precedents. However, the CALJ also cited *Odette L. Campbell,* 80 FR 41062 (2015), as contrary authority. *See id.* The CALJ characterized *Campbell* as ''holding revocation proceedings in abeyance at the post-hearing adjudication level for a lengthy period pending the resolution of both criminal fraud charges and concurrent state administrative proceedings against the respondent,'' *id.,* even though I have repeatedly issued final decisions rejecting this reading of *Campbell. See e.g., Judson H. Somerville,* 82 FR 21408, 21409 n.3 (2017). For the same reasons set forth in those cases, including the fact that *Campbell* involved an application and not a revocation at the time the proceeding was held in abeyance, I again reject the CALJ's reading of *Campbell.*

[3] Although Respondent reached out to the CALJ's law clerk to determine the ''process for filing 'exceptions,' '' and the law clerk advised Respondent of that process and directed Respondent to 21 CFR 1316.66, the administrative record does not include any exceptions filed by Respondent. Aug. 8, 2008 Email from Law Clerk to Respondent, at 1. Government counsel was carbon copied on the entire email exchange. *See id.*

[4] The Recommended Order of the Florida Administrative Law Judge was not included in the Government's evidence.

[5] Under the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' U.S. Dept. of Justice, *Attorney General's Manual on*

does not possess authority to practice medicine in the State of Florida, the State in which he is registered.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the CSA, ''upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' Also, DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *see also Frederick Marsh Blanton,* 43 FR 27616 (1978) (''State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.'').

This rule derives from the text of two provisions of the CSA. First, Congress defined ''the term 'practitioner' [to] mean[ ] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f).

Here, the dispositive question is whether Respondent is currently authorized to dispense controlled substances in Florida, the State in which he is registered. It is undisputed that Florida's Board of Medicine revoked Respondent's license to practice medicine. In his recommendation, the CALJ also stated that ''no dispute exists over the fact that the Respondent currently lacks state authority to handle controlled substances in Florida due to the Board['s] Order . . . which revoked his state license to practice medicine.'' R.D., at 7.

Respondent, however, argues in his Opposition that ''[t]he State of Florida has not made a recommendation regarding Respondent's ability to prescribe controlled substances''—casting doubt on the CALJ's statement that it is undisputed that Respondent lacks this ability. Resp. Opp. at 9. Thus, the question of whether Respondent is currently authorized to dispense controlled substances in Florida is in dispute.

This question is not a question of fact but of law. If this question were purely a fact question, as the CALJ suggests, then summary disposition in this case would have been inappropriate. However, I find that this dispositive question is a disputed legal question, not a question of fact. Specifically, under Florida law, a '' '[p]ractitioner' '' includes ''a physician licensed under chapter 458'' of the Florida statutes, and a '' '[p]hysician' '' under chapter 458 ''means a person who is licensed to practice medicine in'' Florida. Fla. Stat. §§ 893.02(23), 458.305(4). Florida law also states that the ''[p]ractice of medicine,'' in turn, ''means the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition.'' *Id.* § 458.305(3). Thus, I find that Florida law prohibits Respondent from dispensing controlled substances within the meaning of the CSA because, when the Florida Board of Medicine revoked his license to practice medicine on December 29, 2016, it had the legal effect of also taking away Respondent's authority to issue any prescriptions for any ''physical or mental condition.'' *See Christina B. Paylan, M.D.,* 80 FR 69979, 69979 (2015) (holding that Respondent ''lacks authority under Florida law to dispense controlled substances within the meaning of the CSA'' because ''Respondent's license 'to practice as a medical doctor' '' had been suspended) (citing Fla. Stat. §§ 458.305(3), (4)); *Reams* v. *State,* 279 So. 2d 839, 842 (Fla. 1973) (holding that prescribing ''vitamins or food'' rather than ''medicines'' without a medical license constitutes an unlicensed practice of medicine under Florida law).

Accordingly, as a matter of law, Respondent lacked the authority to handle controlled substances in Florida beginning on December 29, 2016 (when the Florida Board of Medicine revoked his State medical license), and he is therefore not entitled to maintain his DEA registration.

Moreover, because ''the controlling question'' in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a DEA registration ''is currently authorized to handle controlled substances in the [S]tate,'' *Hooper,* 76 FR at 71371 (quoting *Anne Lazar Thorn,* 62 FR 12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner has lost his state authority by virtue of the State's use of summary process and the State has yet to provide a hearing to challenge the suspension. *Bourne Pharmacy,* 72 FR 18273, 18274 (2007); *Wingfield Drugs,* 52 FR 27070, 27071 (1987). For the same reasons, given that the Florida Board of Medicine had revoked Respondent's state license, it is of no consequence that Respondent could have prevailed on his appeal to the 1st District Court of Appeals of Florida.[6] In any event, and as already noted, that court has since affirmed the revocation of Respondent's medical license.

As for Respondent's CAP, I conclude that there were adequate grounds for denying it. Specifically, Respondent's position in his CAP is identical to his principal argument seeking a stay of summary disposition of the Show Cause Order that I have already rejected; namely, that his DEA registration should not be revoked until the conclusion of his appeal to Florida's 1st District Court of Appeal. Thus, I agree with the Agency's denial of Respondent's CAP for the same reasons I set forth above for denying Respondent's identical argument to stay summary disposition. In addition, like his stay argument, the need to address the adequacy of Respondent's CAP is now moot because his appeal was denied.

I will therefore reject Respondent's CAP and adopt the CALJ's recommendation that I revoke Respondent's registration and deny any

the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the facts of which I take official notice, Respondent may file a motion for reconsideration within 15 calendar days of service of this order which shall commence on the date this order is mailed.

[6] Similarly, and contrary to Respondent's claim, Due Process did not require the CALJ to delay summary disposition of the case until his appeal to the First District Court of Appeals of Florida had been decided. Resp. Opp. at 10–12. Rather, Due Process required the CALJ to provide Respondent the opportunity to respond to the Order to Show Cause and the Government's Motion for Summary Disposition. The CALJ did provide Respondent such an opportunity, and the Respondent did so respond.

I also agree with the CALJ's recommendation (R.D. at 6 n.9) that I reject, and I do reject, Respondent's argument that revocation is not required in this case based on the *Joe W. Morgan* case and the other Agency precedent cited by Respondent.

pending applications to renew or modify his registration. *See* R.D. at 7.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration No. BW6830500, issued to Kenneth N. Woliner, M.D., be, and it hereby is, revoked. I further order that any pending application of Kenneth N. Woliner to renew or modify the above registration, or any pending application of Kenneth N. Woliner for any other registration, be, and it hereby is, denied. This Order is effective immediately.[7]

Dated: February 7, 2018.

Robert W. Patterson,

Acting Administrator.

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[7] For the same reasons which led the Florida Board of Medicine to revoke Respondent's medical license, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Technical Corrections to Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of technical corrections.

SUMMARY: On December 29, 2017 the Department of Labor (the Department) published notices of exemptions in the **Federal Register** granting relief from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes technical corrections to those published prohibited transaction exemptions (PTEs): PTE 2017–03, JPMorgan Chase & Co., D–11906; PTE 2017–04, Deutsche Investment Management Americas Inc. (DIMA) and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG, D–11908; PTE 2017–05, Citigroup Inc., D–11909; PTE 2017–06, Barclays Capital Inc., D–11910; PTE 2017–07, UBS Assets Management (Americas) Inc.; UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS O'Connor LLC; and Certain Future Affiliates in UBS's Asset Management and Wealth Management Americas Divisions, D–11907.

JPMorgan Chase Co. (JPMC or the Applicant) Located in New York, New York

[Prohibited Transaction Exemption (PTE) 2017–03; Exemption Application No. D–11906].

Discussion

On December 29, 2017, the Department published PTE 2017–03 in the **Federal Register** at 82 FR 61816. PTE 2017–03 is an administrative exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (the Act), and the Internal Revenue Code of 1986, that permits certain entities with specified relationships to JPMC to continue to rely upon the relief provided by PTE 84–14 [1] for a period of five years, notwithstanding JPMC's criminal conviction (the Conviction). The Department granted PTE 2017–03 to ensure that Covered Plans [2] whose assets are managed by a JPMC Affiliated QPAM or a JPMC Related QPAM may continue to benefit from the relief provided by PTE 84–14. The exemption is effective from January 10, 2018 through January 9, 2023.

The Department has decided to make certain technical and clarifying corrections to the exemption, as described below.

Technical Corrections

Sections I(g) and I(m)

The Department's response to Comment 36 on page 61833 of the exemption states: ''Section I(g) requires two specific entities, JPMC and the Investment Bank of JPMorgan Chase Bank, to refrain from providing investment management services to plans. . . . Thus, with respect to Sections I(g) and (m), the obligations imposed extend exclusively to JPMC and the Investment Bank of JPMorgan Chase Bank. . . . The Department also believes that the potential for disqualification of all JPMC Affiliated QPAMs under this agreement will serve as additional incentive for JPMC and JPMorgan Chase Bank to comply in good-faith with the provisions of Sections I(g) and (m).''

The Department is revising its response to Comment 36 by removing references to ''the Investment Bank of JPMorgan Chase Bank'' because Section I(g) and I(m) do not apply to such entity. Similarly, the Department is also removing the phrase ''JPMorgan Chase Bank'' from the sentence that reads, ''[t]he Department also believes that the potential for disqualification of all JPMC Affiliated QPAMs under this agreement will serve as additional incentive for JPMC and JPMorgan Chase Bank to comply in good-faith with the provisions of Sections I(g) and (m).''

Section I(h)(1)(vii)

The Department is adding the term ''as reasonably possible'' to the first sentence of the first full paragraph on page 61821 of the preamble to the exemption. As revised, the first sentence of the first full paragraph on page 61821 now reads: ''The Department has revised the term 'corrected promptly' to be consistent with the Department's intent that violations or compliance failures be corrected 'as soon as reasonably possible upon discovery or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier).' ''

Section I(i)(10)

Section I(i)(10) of the exemption states: ''(10) Each JPMC Affiliated QPAM and the auditor must submit to [the Office of Exemption Determinations] OED: Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, no later than two (2) months after the execution of any such engagement agreement.''

The Department is revising Section I(i)(10) of the exemption to clarify the timing requirements for submission of the auditor agreements. As revised, Section I(i)(10) of the exemption now states: ''(10) Any engagement agreement with an auditor to perform the audits required under the terms of this exemption must be submitted to OED by March 9, 2018 if the agreement was executed on or prior to January 10, 2018. Any engagement agreement(s) entered into subsequent to January 10, 2018 must be submitted to OED no later than two (2) months after the execution of such engagement agreement.''

Section I(j)(7)

Section I(j)(7) of the exemption states: ''(7) By July 9, 2018, each JPMC

[1] 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84–14 or the QPAM Exemption.

[2] A ''Covered Plan'' is a plan subject to Part 4 of Title 1 of ERISA (''ERISA-covered plan'') or a plan subject to Section 4975 of the Code (''IRA''), with respect to which a JPMC Affiliated QPAM relies on PTE 84–14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the JPMC Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA covered plan or IRA.

Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the JPMC Affiliated QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement.''

The Department notes that the term ''prospective Covered Plan,'' as used in Section I(j)(7), means a Covered Plan that enters into a written asset or investment management agreement with a JPMC Affiliated QPAM on or after July 10, 2018.

Section I(k)

Section I(k) of the exemption states: ''(k) By March 10, 2018, each JPMC Affiliated QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Any prospective client for which a JPMC Affiliated QPAM relies on PTE 84–14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the JPMC Affiliated QPAM. Disclosures may be delivered electronically.''

The Department is replacing the term ''prospective client'' with ''prospective Covered Plan.'' As revised, ''prospective Covered Plan,'' as used in Section I(k), means a Covered Plan that enters into a written asset or investment management agreement with a JPMC Affiliated QPAM on or after March 10, 2018.

The Department is clarifying that the requirements of Section I(k) will be met with respect to all current and prospective Covered Plans if, by March 10, 2018, the Applicant posts the required Section I(k) disclosure documents on a website whose link/address is referenced in: (a) The notice sent by the Applicant following the grant of the temporary exemption; or (b) the relevant investment management agreement received by the client (including instances where such reference describes the site as containing the required obligations under the temporary exemption), and the Applicant informs clients who are Covered Plan clients as of the effective date of this exemption, in writing, by March 10, that they can go back to the website to find the additional documents, which are identified.

The Department is also clarifying that, for Covered Plans that enter into a written asset or investment management agreement with the Applicant between January 11, 2018, and March 9, 2018, the written notice that the website has been updated must be provided to such Covered Plans by March 31, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number).

Deutsche Investment Management Americas Inc. (DIMA) and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG (Collectively, the Applicant or the DB QPAMs), Located in New York, New York

[Prohibited Transaction Exemption (PTE) 2017–04; Exemption Application No. D–11908]

Discussion

On December 29, 2017, the Department published PTE 2017–04 in the **Federal Register** at 82 FR 61840. PTE 2017–04 is an administrative exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (the Act), and the Internal Revenue Code of 1986, that permits certain entities with specified relationships to Deutsche Securities Korea, Co. (DSK) [3] or DB Group Services (UK) Limited (DB Group Services) [4] to continue to rely upon the relief provided by PTE 84–14 for a period of three years,[5] notwithstanding certain criminal convictions (the Convictions). The Department granted PTE 2017–04 to ensure that Covered Plans [6] with assets managed by an asset manager within the corporate family of Deutsche Bank AG (together with its current and future affiliates, Deutsche Bank) may continue to benefit from the relief provided by PTE 84–14. The exemption is effective from April 18, 2018 through April 17, 2021 (the Exemption Period). The Department has decided to make certain technical and clarifying corrections to the exemption, as described below.

Technical Corrections

Section I Prefatory Language

The prefatory language of Section I of the exemption states, in relevant part: ''Certain entities with specified relationships to Deutsche Bank AG . . . will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 . . . notwithstanding: . . . . (2) the 'US Conviction' against DB Group Services (UK) Limited, an affiliate of Deutsche Bank based in the United Kingdom (hereinafter, DB Group Services, as further defined in Section II(e)) . . . .''

For consistency with the re-ordered Definitions in Section II of the exemption, the relevant prefatory language of Section I now reads, ''DB Group Services (UK) Limited, an affiliate of Deutsche Bank based in the United Kingdom (hereinafter, DB Group Services, as further defined in Section II(c)).''

Section I(h)(1)(v)

Section I(h)(1)(v) in the exemption states, in relevant part: ''The Policies must require, and must be reasonably designed to ensure that: . . . . (v) To the best of the DB QPAM's knowledge at the time, the DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs with respect to Covered Plans.''

For clarity, the Department has deleted the phrase ''with respect to ERISA-covered plans or IRAs.'' As revised, Section I(h)(1)(v) now reads, in relevant part: ''The Policies must require, and must be reasonably designed to ensure that: . . . . (v) To the best of the DB QPAM's knowledge at the time, the DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans.''

[3] Deutsche Securities Korea, Co. is a South Korean ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of Deutsche Bank AG.

[4] DB Group Services (UK) Limited is United Kingdom-based ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of Deutsche Bank AG.

[5] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84–14 or the QPAM exemption.

[6] A ''Covered Plan'' is a plan subject to Part 4 of Title 1 of ERISA (''ERISA-covered plan'') or a plan subject to section 4975 of the Code (''IRA'') with respect to which a DB QPAM relies on PTE 84–14, or with respect to which a DB QPAM (or any Deutsche Bank affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the DB QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

Section I(h)(2)

Section I(h)(2) of the exemption states: ''Each DB QPAM must develop and implement a program of training (the Training), to be conducted at least annually . . . The first Training under this Final Exemption must be completed by all relevant DB QPAM personnel by April 18, 2019 (by the end of this 30-month period, asset/portfolio management, trading, legal, compliance, and internal audit personnel who were employed from the start to the end of the period must have been trained twice: The first time under PTE 2016–13; and the second time under this exemption).''

The Department is revising this condition to reflect the Department's intended timeline for completing the first Training under this exemption. To this end, the Department is replacing ''April 18, 2019'' with ''April 17, 2019.'' Furthermore, the Department is replacing the phrase ''by the end of this 30-month period'' with ''by the end of the 24-month period commencing on the effective date of PTE 2016–13 and ending on April 17, 2019.'' As revised, Section I(h)(2) in relevant part now reads: ''The first Training under this Final Exemption must be completed by all relevant DB QPAM personnel by April 17, 2019 (by the end of the 24-month period commencing on the effective date of PTE 2016–13 and ending on April 17, 2019, asset/portfolio management, trading, legal, compliance, and internal audit personnel who were employed from the start to the end of the period must have been trained twice: The first time under PTE 2016–13; and the second time under this exemption).''

Section I(h)(2)(i)

Section I(h)(2)(i) of the exemption states: ''The Training must: (i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.''

The Department is revising Section I(h)(2)(i) to clarify that this exemption's Training requirement must be included in the Policies. As revised, Section I(h)(2)(i) reads, in relevant part: ''The Training must: (i) Be required by the Policies and, at a minimum. . . .''

Section I(i)(5)(i)

Section I(i)(5)(i) of the exemption states: ''For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) . . . The Audit Report must include the auditor's specific determinations regarding: (i) The adequacy of each DB QPAM's Policies and Training . . . The DB QPAM must promptly address or prepare a written plan of action to address any determination of inadequacy by the auditor regarding the adequacy of the Policies and Training. . . .''

For clarity, the Department is replacing the phrase ''any determination of inadequacy by the auditor regarding the adequacy of the Policies and Training'' with ''any determination by the auditor regarding the adequacy of the Policies and Training.'' As revised, Section I(i)(5)(i) in relevant part now states: ''The DB QPAM must promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training. . . .''

Section I(i)(7)

Section I(i)(7) of the exemption states: ''(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the DB QPAM with respect to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that such DB QPAM has addressed, corrected, or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. . . .''

The Department is replacing the term ''General Counsel'' with ''general counsel'' and making clear that the certification of the Audit Report can come from the respective line of business's general counsel or one of its three most senior officers. As revised, Section I(i)(7) in relevant part now reads: ''With respect to each Audit Report, the general counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the DB QPAM with respect to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption.''

Section I(i)(8)

Section I(i)(8) of the exemption states: ''(8) The Audit Committee of Deutsche Bank's Supervisory Board is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report. Deutsche Bank must provide notice to the Department in the event of a switch in the committee to which the Audit Report will be provided.''

The Department is revising the first sentence of Section I(i)(8) by removing the term ''legal.'' The condition now reads: ''(8) The Audit Committee of Deutsche Bank's Supervisory Board is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.''

Section I(i)(9)

Section I(i)(9) of the proposed exemption states: ''(9) Each DB QPAM provides its certified Audit Report, by regular mail to: The Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109, no later than 45 days following its completion.'' Section I(i)(9) of the final exemption states: ''(9) Each DB QPAM provides its certified Audit Report, by regular mail. . . . This delivery must take place no later than thirty (30) days following completion of the Audit Report. . . .''

The Department is revising Section I(i)(9) for consistency with the proposed exemption by replacing ''thirty (30) days'' with ''forty-five (45) days.'' Section I(i)(9) in relevant part now states: ''This delivery must take place no later than forty-five (45) days following completion of the Audit Report.''

Section I(i)(10)

Section I(i)(10) of the exemption states: ''(10) Each DB QPAM and the auditor must submit to OED any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, no later than two (2) months after the execution of any such engagement agreement.''

The Department is revising Section I(i)(10) to reflect that any engagement agreement entered into with the auditor prior to or on April 18, 2018 in order to comply with this exemption must be submitted by June 17, 2018. Section

I(i)(10), as revised, now reads: ''(10) Any engagement agreement to perform the audits required under the terms of this exemption must be submitted to OED by June 17, 2018 if the agreement was executed on or prior to April 18, 2018. Any engagement agreement(s) entered into subsequent to April 18, 2018 must be submitted to OED no later than two (2) months after the execution of such engagement agreement.''

Section I(j)(7)

Section I(j)(7) of the exemption in relevant part states: ''(7) By October 17, 2018, each DB QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the DB QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the DB QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–13 that meets the terms of this condition.''

The Department notes that the term ''prospective Covered Plan,'' as used in Section I(j)(7), means a Covered Plan that enters into a written asset or investment management agreement with a DB QPAM on or after October 17, 2018.

The Department also notes that the phrase, ''This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–13 that meets the terms of this condition,'' means that a notice that satisfies Section I(j) of PTE 2016–13 will satisfy Section I(j)(7) of this exemption, unless such notice contains any language that limits, or is inconsistent with, the scope of this exemption.

Section I(k)

Section I(k) of the exemption states: ''(k) By June 17, 2018, each DB QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Convictions result in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a DB QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Any prospective client for which a DB QPAM relies on PTE 84–14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the DB QPAM. Disclosures may be delivered electronically.''

The Department is revising Section I(k) by adding the phrase ''that entered into a written asset or investment management agreement with a DB QPAM on or before June 16, 2018'' following the phrase ''to each sponsor and beneficial owner of a Covered Plan.'' As revised, Section I(k) now states, in relevant part: ''By June 17, 2018, each DB QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction separately results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a DB QPAM on or before June 16, 2018, or the sponsor of an investment fund in any case where a DB QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests.''

The Department notes that the phrase, ''Any prospective client for which a DB QPAM relies on PTE 84–14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption . . .'' means any Covered Plan that enters into a written asset or investment management agreement with a DB QPAM on or after June 17, 2018.

Section I(m)(1)

Section I(m)(1) of the exemption states: ''(1) By October 17, 2018, Deutsche Bank designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein.''

The Department notes that each relevant line of business may designate its own Compliance Officer in order to comply with this condition.

Section I(m)(1)(i)

Section I(m)(1)(i) of the exemption states: ''(i) The Compliance Officer must be a legal professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code.''

The Department is removing the word ''legal'' from Section I(m)(1)(i). As revised, Section I(m)(1)(i) now reads: ''(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code.''

Section I(m)(1)(ii)

Section I(m)(1)(ii) of the exemption states: ''(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management.''

The Department is removing the word ''legal'' from Section I(m)(1)(ii). As revised, Section I(m)(1)(ii) now reads: ''(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of compliance for asset management.''

Section II(a)

Section II(a) of the exemption states: ''The term 'Convictions' means (1) the judgment of conviction against DB Group Services, in case number 3:15–cr–00062–RNC to be entered in the United States District Court for the District of Connecticut to a single count of wire fraud, in violation of 18 § U.S.C. 1343 . . .'' This Section is revised to read,: ''The term 'Convictions' means (1) the judgment of conviction against DB Group Services that was entered on April 18, 2017, in case number 3:15-cr-00062–RNC in the United States District Court for the District of Connecticut to a single count of wire fraud, in violation of 18 U.S.C. 1343 . . .''

Discussion of Written Comments

The prefatory section to the discussion of written comments on page 61840 of the **Federal Register** states: ''[t]he Department received written comments from the Applicant, members of the U.S. Congress, and a number of plan and IRA clients of Deutsche Bank.'' This section is revised to read, in relevant part, ''[t]he Department received written comments from the Applicant, members of the U.S. Congress, and several other commenters.''

FOR FURTHER INFORMATION CONTACT: Mr. Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number).

Citigroup Inc. (Citigroup or the Applicant) Located in New York, New York

[Prohibited Transaction Exemption (PTE) 2017–05; Exemption Application No. D–11909]

Discussion

On December 29, 2017, the Department published PTE 2017–05 in the **Federal Register** at 82 FR 61864. PTE 2017–05 is an administrative exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (the Act), and the Internal Revenue Code of 1986, that permits certain entities with specified relationships to Citigroup to continue to rely upon the relief provided by PTE 84–14 [7] for a period of five years,[8] notwithstanding Citicorp's criminal conviction (the Conviction). The Department granted PTE 2017–05 to ensure that Covered Plans [9] whose assets are managed by a Citigroup Affiliated QPAM or Citigroup Related QPAM may continue to benefit from the relief provided by PTE 84–14.

The Department has decided to make certain technical and clarifying corrections to the exemption, as described below.

Technical Corrections

Preamble

The Department is replacing the term ''Citcorp'' with ''Citicorp'' on page 61876 of the preamble to the exemption.

Section I(i)(1)

The Department is revising its discussion of the entities subject to the Section I(i) Audit requirement. On page 61869 of the exemption, the Department is replacing the sentence that reads: ''The Department notes that Section I(i) requires the audit of each Citigroup entity that relies upon QPAM status, or expressly represents to ERISA-covered plan or IRA clients that it qualifies as a QPAM,'' with the following: ''The Department notes that Section I(i) requires the audit of each Citigroup Affiliated QPAM.''

Section I(i)(10)

Section I(i)(10) of the exemption states: ''(10) Each Citigroup Affiliated QPAM and the auditor must submit to [the Office of Exemption Determinations] OED: Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, no later than two (2) months after the execution of any such engagement agreement.''

The Department is revising Section I(i)(10) of the exemption to clarify the timing requirements for submission of the auditor agreements. As revised, Section I(i)(10) of the exemption now states: ''(10) Any engagement agreement with an auditor to perform the audits required under the terms of this exemption must be submitted to OED by March 9, 2018 if the agreement was executed on or prior to January 10, 2018. Any engagement agreement(s) entered into subsequent to January 10, 2018 must be submitted to OED no later than two (2) months after the execution of such engagement agreement.''

Section I(j)(7)

Section I(j)(7) of the exemption states: ''(7) By July 9, 2018, each Citigroup Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the Citigroup Affiliated QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the Citigroup Affiliated QPAM and such clients or other written contractual agreement.''

The Department notes that the term ''prospective Covered Plan,'' as used in Section I(j)(7), means a Covered Plan that enters into a written asset or investment management agreement with a Citigroup Affiliated QPAM on or after July 10, 2018.

Section I(k)

Section I(k) of the exemption states: ''(k) By March 10, 2018, each Citigroup Affiliated QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a Citigroup Affiliated QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Any prospective clients for which a Citigroup Affiliated QPAM relies on PTE 84–14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset or investment management agreement from the Citigroup Affiliated QPAM. Disclosures may be delivered electronically.''

The Department notes that ''prospective clients,'' as referred to in Section I(k), means Covered Plans that enter into a written asset or investment management agreement with a Citigroup Affiliated QPAM on or after March 10, 2018. The Department also notes that the disclosure materials required to be provided to prospective clients under Section I(k) do not need to be provided to such clients prior to March 10, 2018. Such disclosures, rather, must be made, ''prior to, or contemporaneously with, the client's receipt of a written asset or investment management agreement from the Citigroup Affiliated QPAM.'' Finally, the Department notes that the disclosure materials required to be provided to prospective clients under the second sentence of Section I(k) are the same materials referenced in the first sentence of Section I(k).

Section I(p)

The discussion of the Right to Copies of Policies and Procedures on page 61876 of the exemption states: ''The Department has also modified Section I(p) to require that the Citigroup Affiliated QPAMs provide notice regarding the information on the website within 60 days of the effective date of this exemption, and thereafter to the extent certain material changes are made to the Policies.''

The Department is revising the discussion of the Right to Copies of Policies and Procedures to conform with the language of Section I(p). As revised, the discussion on page 61876 now states: ''The Department has also modified Section I(p) to require that the Citigroup Affiliated QPAMs provide notice regarding the information on the website *by July 9, 2018*. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.''

[7] 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84–14 or the QPAM Exemption.

[8] PTE 2017–05 is effective from January 10, 2018 through January 9, 2023.

[9] A ''Covered Plan'' is a plan subject to Part 4 of Title 1 of ERISA (''ERISA-covered plan'') or a plan subject to Section 4975 of the Code (''IRA''), with respect to which a Citigroup Affiliated QPAM relies on PTE 84–14, or with respect to which a Citigroup Affiliated QPAM (or any Citigroup affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the Citigroup Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA covered plan or IRA.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number).

Barclays Capital Inc. (BCI or the Applicant), Located in New York, New York

[Prohibited Transaction Exemption (PTE) 2017–06; Exemption Application No. D–11910]

Discussion

On December 29, 2017, the Department published PTE 2017–06 in the **Federal Register** at 82 FR 61881. PTE 2017–06 is an administrative exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (the Act), and the Internal Revenue Code of 1986, that permits certain entities with specified relationships to Barclays PLC (BPLC) to continue to rely upon the relief provided by PTE 84–14 for a period of five years,[10] notwithstanding certain criminal convictions (the Convictions). The Department granted PTE 2017–06 to ensure that Covered Plans [11] with assets managed by an asset manager within the corporate family of BPLC may continue to benefit from the relief provided by PTE 84–14. The effective date of PTE 2017–06 is January 10, 2018, and the exemption is effective from January 10, 2018, through January 9, 2023 (the Exemption Period).

The Department has decided to make certain technical and clarifying corrections to the exemption, as described below.

Technical Corrections

Section I(b)

Section I(b) of the exemption states: ''Apart from a non-fiduciary line of business within BCI, the Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, and agents other than BPLC, and employees of such Barclays Affiliated QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction.'' This Section is revised by replacing ''within BCI'' with ''of a BPLC subsidiary.'' In addition, the phrase, ''who had responsibility for or exercised authority in connection with the management of plan assets'' now appears after ''Barclays Affiliated QPAMs'' in the parenthetical. As revised, Section I(b) reads, in pertinent part, ''Apart from a non-fiduciary line of business of a BPLC subsidiary, the Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, and agents other than BPLC, and employees of such Barclays Affiliated QPAMs who had responsibility for or exercised authority in connection with the management of plan assets) did not receive direct compensation . . . .''

Section I(j)

Section I(j) of the exemption states, in relevant part:

''As of January 10, 2018 and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a Barclays Affiliated QPAM and a Covered Plan, the Barclays Affiliated QPAM agrees and warrants . . . .''

For clarity, the phrase, ''As of January 10, 2018 and throughout the Exemption Period,'' is revised to read, ''Effective on the date that a Barclays Affiliated QPAM enters into any arrangement, agreement, or contract, after January 10, 2018, with any Covered Plan, and throughout the Exemption Period, ...''

Section I(j)(7)

Section I(j)(7) states: ''Prior to a Barclays Affiliated QPAM's engagement with an ERISA-covered plan or IRA for the provision of asset management or other discretionary fiduciary services . . . .'' The Department is replacing the phrase, ''an ERISA-covered plan or IRA'' with ''a Covered Plan.''

Section I(k)

Section I(k) states: ''Any client for which a Barclays Affiliated QPAM relies on PTE 84–14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14, prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the Barclays Affiliated QPAM. Disclosures may be delivered electronically.''

The Department is replacing the term ''client'' with ''Covered Plan.'' As revised, ''Covered Plan,'' as used in Section I(k), means a Covered Plan that enters into a written asset or investment management agreement with a Barclays Affiliated QPAM.

Section I(m)(1)(iv)

Section I(m)(1)(iv) states: ''(iv) Each Annual Report must be provided to the appropriate corporate officers of BPLC and each Barclays Affiliated QPAM to which such report relates; the head of compliance and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM and the General Counsel (or their functional equivalent) of BPLC; and must be made unconditionally available to the independent auditor described in Section I(i) above.''

Comment Section 37 of the exemption at 82 FR 61896 states that the Department intended to revise Section I(m)(1)(iv) by deleting the phrase, ''the appropriate corporate officers of BPLC and each Barclays Affiliated QPAM to which such report relates'' from the condition. Such revision did not appear in the text. Therefore, the Department is now revising Section I(m)(1)(iv) to read, ''(iv) Each Annual Report must be provided to the head of compliance and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM and the General Counsel (or their functional equivalent) of BPLC; and must be made unconditionally available to the independent auditor described in Section I(i) above.''

Section II(d) [12]

Section II(d) states, ''The term ''Conviction'' means the judgment of conviction against BPLC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court), Case Number 3:15–cr–00077–SRU–1.''

Section II(d) is revised to reflect that the Conviction occurred prior to the effective date of the exemption. Section II(d) now reads, in pertinent part,

[10] 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84–14.

[11] A ''Covered Plan'' is a plan subject to Part 4 of Title 1 of ERISA (''ERISA-covered plan'') or a plan subject to section 4975 of the Code (''IRA'') with respect to which a Barclays Affiliated QPAM relies on PTE 84–14, or with respect to which a Barclays Affiliated QPAM (or any BPLC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the Barclays Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

[12] In the final grant notice, the Department renumbered Section II(d), which was previously Section II(e) in the proposed exemption.

''. . . . 15 U.S.C. 1, which was entered in the District Court. . . .''

Section II(e) [13]

SectionII(e) states, ''The term ''Conviction Date'' means the date of the judgment of the trial court. For avoidance of confusion, the Conviction Date is January 10, 2017, as set forth in Case Number 3:15–cr–00077–SRU.'' Section II(e) is revised to add a ''–1'' after the letters ''SRU'' in the case number. As revised, Section II(e) now reads, in pertinent part, ''. . . . as set forth in Case Number 3:15–cr–00077–SRU–1.''

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number).

UBS Assets Management (Americas) Inc.; UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS O'Connor LLC; and Certain Future Affiliates in UBS's Asset Management and Wealth Management Americas Divisions (collectively, the Applicants or the UBS QPAMs) Located in Chicago, Illinois; Hartford, Connecticut; New York, New York; and Chicago, Illinois, Respectively

[Prohibited Transaction Exemption (PTE) 2017–07; Exemption Application No. D–11907]

Discussion

On December 29, 2017, the Department published PTE 2017–07 in the **Federal Register** at 82 FR 61903. PTE 2017–07 is an administrative exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (the Act), and the Internal Revenue Code of 1986, that permits certain entities with specified relationships to UBS (as defined in Section II(g)) (hereinafter, the UBS QPAMs) to continue to rely upon the relief provided by PTE 84–14 for a period of three years,[14] notwithstanding the ''2013 Conviction'' of UBS Securities Japan Co. Ltd [15] and the ''2017 Conviction'' of UBS (collectively, the Convictions as defined in Section II(a)). The Department granted PTE 2017–07 to ensure that Covered Plans [16] with assets managed by UBS QPAMs may continue to benefit from the relief provided by PTE 84–14. The exemption is effective from January 10, 2018 through January 9, 2021 (the Exemption Period). The Department has decided to make certain technical and clarifying corrections to the exemption, as described below.

Technical Corrections

Section I(f)

Section I(f) of the exemption states: ''[a] UBS QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the FX Misconduct or the criminal conduct that is the subject of the Convictions; or cause the UBS QPAM, its affiliates or related parties to directly or indirectly profit from the FX Misconduct or the criminal conduct that is the subject of the Convictions.'' The Department is revising Section I(f) by inserting the word ''or'' between the phrase ''or cause the UBS QPAM'' and the phrase ''its affiliates'' and by removing the phrase ''or related parties.'' As revised, Section I(f) now reads, ''A UBS QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: further the FX Misconduct or the criminal conduct that is the subject of the Convictions; or cause the UBS QPAM or its affiliates to directly or indirectly profit from the FX Misconduct or the criminal conduct that is the subject of the Convictions.''

Section I(h)(1)(ii)

Section I(h)(1)(ii) of the exemption states: ''[t]he UBS QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in such case as applicable, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans.'' For clarity and consistency, the Department is replacing the word ''such'' with the word ''each'' and by inserting the phrase ''with respect to each Covered Plan'' after the phrase ''as applicable.'' As revised, Section I(h)(1)(ii) now reads, ''The UBS QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in each case as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans.''

Section I(h)(2)(ii) and Section I(i)(10)

Section I(h)(2)(ii) of the exemption states: ''(2) Each UBS QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant UBS QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must: . . . . (ii) [b]e conducted by an independent professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.'' The Department is revising Section I(h)(2)(ii) to reflect that the required training may be conducted by appropriate UBS personnel who have been prudently selected. Therefore, the Department is removing the word ''independent'' from Section I(h)(2)(ii) and, as revised, Section I(h)(2)(ii) now reads: ''Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.''

Section I(i)(10) of the exemption states: ''[e]ach UBS QPAM and the auditor must submit to OED any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption. Further, each UBS QPAM must submit to OED any engagement entered into with any other person or entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this exemption no later than two (2) months after the execution of any such engagement agreement.'' The Department is revising Section I(i)(10) to reflect that the UBS QPAMs need not submit to Office of Exemption Determinations (OED) an engagement agreement entered into to comply with the training or Policy conditions, and to reflect that any engagement agreement entered into with the auditor prior to or on January 10, 2018 in order to comply with this exemption must be submitted by March 9, 2018. Section I(i)(10), as revised, now reads: ''Any engagement agreement with an auditor to perform the audits

[13] In the final grant notice, the Department renumbered Section II(e), which was previously Section II(f) in the proposed exemption.

[14] 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84–14 or the QPAM exemption.

[15] UBS Securities Japan Co. Ltd is a wholly owned subsidiary of UBS incorporated under the laws of Japan.

[16] A ''Covered Plan'' is a plan subject to Part 4 of Title 1 of ERISA (''ERISA-covered plan'') or a plan subject to section 4975 of the Code (''IRA'') with respect to which a UBS QPAM relies on PTE 84–14, or with respect to which a UBS QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the UBS QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

required under the terms of this exemption must be submitted to OED by March 9, 2018 if the agreement was executed on or prior to January 10, 2018. Any engagement agreement(s) entered into subsequent to January 10, 2018 must be submitted to OED no later than two (2) months after the execution of such engagement agreement.''

Section I(i)(1) and Footnote 71

Section I(i)(1) of the exemption states, in relevant part: ''Each UBS QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each UBS QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The first annual audit must cover a fourteen-month period that begins on January 10, 2017 (the Initial Audit Period) and all subsequent audits must cover consecutive twelve month periods commencing upon the end of the Initial Audit Period. The Initial Audit Period shall cover the period of time during which PTE 2016–17 is effective and a portion of the time during which this exemption is effective and the audit terms contained in this Section I(i) will supersede the terms of Section I(i) of PTE 2016–17 except as otherwise provided in this exemption. In determining compliance with the conditions for relief in PTE 2016–17 and this exemption, including the Policies and Training requirements, for purposes of conducting the audit, the auditor will rely on the conditions for exemptive relief as then applicable to the respective periods under audit'' (footnotes omitted).

To correct the timing of the audit requirement, the Department is revising Section I(i)(1) of the exemption to reflect that the Initial Audit Period begins on January 10, 2018 and ends on March 9, 2019, and the corresponding Audit Report must be completed by September 9, 2019. Additionally, the Second audit period must cover the period March 10, 2019 through March 9, 2020 and must be completed by September 9, 2020 and the third audit must cover the period from March 10, 2020 through March 9, 2021. In connection with the revision, the Department is deleting from Section I(i) the following language and corresponding footnote 72 on page 61917 of the exemption: ''The Initial Audit Period shall cover the period of time during which PTE 2016–17 is effective and a portion of the time during which this exemption is effective and the audit terms contained in this Section I(i) will supersede the terms of Section I(i) of PTE 2016–17 except as otherwise provided in this exemption. In determining compliance with the conditions for relief in PTE 2016–17 and this exemption, including the Policies and Training requirements, for purposes of conducting the audit, the auditor will rely on the conditions for exemptive relief as then applicable to the respective periods under audit.''

As revised, Section I(i)(1) in relevant part now states, ''Each UBS QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each UBS QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The first annual audit must cover a fourteen-month period that begins on January 10, 2018 and ends on March 9, 2019 (the Initial Audit Period), and must be completed by September 9, 2019. The second audit must cover the period from March 10, 2019 through March 9, 2020 and must be completed by September 9, 2020. In the event that the Exemption Period is extended or a new exemption is granted, the third audit would cover the period from March 10, 2020 through March 9, 2021 and would have to be completed by September 9, 2021 (unless the Department chooses to alter the annual audit requirement in the new or extended exemption).''

In coordination with the correction to Section I(i)(1) above, Footnote 71 on page 61917 included with Section I(i) is revised to state, ''The third audit referenced above would not have to be completed until after the Exemption Period expires. If the Department ultimately decides to grant relief for an additional period, it could decide to alter the terms of the exemption, including the audit conditions (and the timing of the audit requirements). Nevertheless, the Applicant should anticipate that the Department will insist on strict compliance with the audit terms and schedule set forth above. As it considers any new exemption application, the Department may also contact the auditor for any information relevant to its determination.''

The Department's discussion in Comment V on page 61909 of the exemption should be read in a manner that is consistent with these revisions.

Section I(i)(5)(ii)

Section I(i)(5)(ii) of the exemption states: ''(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to UBS and the UBS QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the UBS QPAMs. The Audit Report must include the auditor's specific determinations regarding: . . . (ii) The adequacy of the Annual Review described in Section I(m).''

For clarity, the Department is revising Section I(i)(5)(ii) of the exemption by adding the phrase ''most recent'' before the phrase ''Annual Review''. As revised, Section I(i)(5)(ii) now reads, in relevant part, ''The adequacy of the most recent Annual Review described in Section I(m).''

Section I((i)(7)

Section I(i)(7) of the exemption states: ''[w]ith respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, such UBS QPAM has addressed, corrected, remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination, that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code.''

For consistence with the Department's intention, as expressed in the exemption's comment section on page 61911 regarding certification of the Audit Report, Section I(i)(7) is revised by adding the phrase ''to the best of such officer's knowledge at the time'' after the phrase ''that the officer has reviewed the Audit Report and this exemption; that . . .'' and after the phrase ''Such certification must also include the signatory's determination that. . . .'' As revised, Section I(i)(7) now reads, ''With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, to the best of such officer's knowledge at the time, such

UBS QPAM has addressed, corrected, remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that, to the best of such officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code.''

Section I(i)(9)

Section I(i)(9) of the proposed exemption states: ''(9) Each UBS QPAM must provide its certified Audit Report, by regular mail to: The Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109, no later than 45 days following its completion.'' Section I(i)(9) of the final exemption states: ''(9) Each UBS QPAM provides its certified Audit Report, by regular mail . . . . This delivery must take place no later than 30 days following completion of the Audit Report.''

The Department is revising Section I(i)(9) for consistence with the proposed exemption, by replacing the phrase ''30 days'' with the phrase ''45 days.'' As revised, Section I(i)(9) in relevant part now states, ''This delivery must take place no later than 45 days following completion of the Audit Report.''

Section I(j)(7)

Section I(j)(7) of the exemption states: ''[b]y July 9, 2018, each UBS QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the UBS QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the UBS QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–17 that meets the terms of this condition. Notwithstanding the above, a UBS QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement.''

The Department notes that the term ''prospective Covered Plan,'' as used in Section I(j)(7), means a Covered Plan that enters into a written asset or investment management agreement with a UBS QPAM on or after July 9, 2018.

Section I(k)

Section I(k) of the exemption states: ''By March 10, 2018, each UBS QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction separately results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a UBS QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Any prospective client for which a UBS QPAM relies on PTE 84–14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the UBS QPAM. Disclosures may be delivered electronically.''

The Department is revising Section I(k) by adding the phrase ''that entered into a written asset or investment management agreement with a UBS QPAM on or before March 9, 2018'' following the phrase ''to each sponsor and beneficial owner of a Covered Plan'' to clarify that Covered Plans that have entered into a written asset or investment management agreement with a UBS QPAM on or before March 9, 2018 must receive the disclosure material required under Section I(k) by March 10, 2018. As revised, Section I(k) in relevant part now states, ''By March 10, 2018, each UBS QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction separately results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a UBS QPAM on or before March 9, 2018, or the sponsor of an investment fund in any case where a UBS QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests.''

The Department notes that the phrase, ''Any prospective client for which a UBS QPAM relies on PTE 84–14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption . . .'' means: Any Covered Plan that enters into a written asset or investment management agreement with a UBS QPAM on or after March 10, 2018.

Section I(m)(1) and Footnote 73

Section I(m)(1) of the exemption states: ''[b]y July 9, 2018, UBS designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review for each period corresponding to the audit periods set forth in Section I(i)(1) (including the Initial Audit Period) (the Annual Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met'' (footnote omitted). Footnote 73 on page 61919 of the exemption provides that, ''Note that such Annual Review must be completed with respect to the annual periods ending January 9, 2019; January 9, 2020; and January 9, 2021.''

For consistence with the Department's intention, as expressed in the exemption's comment section V on page 61909, that it would be efficient for the time frame for the Annual Review to coordinate with the time frame for the compliance review conducted by the UBS QPAMs for other regulators, the Department is revising the Initial Audit Period to reflect that such period begins on January 10, 2018 and ends on March 9, 2019. Additionally, the Department is revising footnote 73 on page 61919 of the exemption to be consistent with the revised dates of the audit periods and to remove the word ''annual'' before the word ''periods.'' As revised, footnote 73 now reads, ''Note that such Annual Review must be completed with respect to the periods ending March 9, 2019; March 9, 2020; and March 9, 2021.''

Section I(m)(1)(ii)

Section I(m)(1)(ii) provides that, ''[t]he Compliance Officer has a dual-reporting line within UBS's Compliance and Operational Risk Control (C&ORC) function: (A) a divisional reporting line to the Head of Compliance and Operational Risk Control, Asset Management, and (B) a regional reporting line to the Head of Americas Compliance and Operational Risk Control. The C&ORC function will be organizationally independent of UBS's business divisions—including Asset Management and the Investment Bank—and is led by the Global Head of

C&ORC, who will report directly to UBS's Chief Risk Officer.''

To accommodate UBS's organizational structure in a manner consistent with the requirements of this exemption, Section I(m)(1)(ii) of the exemption is revised to read, ''The Compliance Officer has a reporting line within UBS's Compliance and Operational Risk Control (C&ORC) function to the Head of Compliance and Operational Risk Control, Asset Management. The C&ORC function is organizationally independent of UBS's business divisions—including Asset Management and the Investment Bank—and is led by the Global Head of C&ORC, who will report directly to UBS's Chief Risk Officer.''

Section I(m)(2)(v)

Section I(m)(2)(v) of the exemption states that, ''[e]ach Annual Review, including the Compliance Officer's written Annual Report, must be completed within at least three (3) months following the end of the period to which it relates.'' Section I(m)(2)(v) of the exemption is revised by deleting the phrase ''at least.'' As revised, Section I(m)(2)(v) now reads, ''Each Annual Review, including the Compliance Officer's written Annual Report, must be completed within three (3) months following the end of the period to which it relates.''

Comment Section Regarding Notice of Right To Obtain Copy of Policies—Section I(r)

The comment section on page 61915 of the exemption discussing the right to obtain a copy of the Polices is hereby revised to be consistent with Section I(r) of the exemption, which provides that ''[b]y July 09, 2018, each UBS QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the UBS QPAM's written Policies developed in connection with this exemption. . . .'' Accordingly, the sentence beginning ''[t]he Department also agrees with the Applicant . . .'' in the first full paragraph in the second column on page 61915 is revised to read, ''The Department also agrees with the Applicant that the timing requirement for disclosure should be revised and, accordingly, has modified the condition of Section I(r) to require notice regarding the information on the website within 6 months of the effective date of this exemption (by July 09, 2018), and thereafter to the extent certain material changes are made to the Policies.''

References to ''UBS'' and ''UBS, AG''

The term ''UBS, AG'' as it appears in Section II(g) is revised to ''UBS AG.'' The term ''UBS, AG'' is it appears elsewhere in the exemption is revised to mean ''UBS.''

Definition of UBS QPAM—Section II(h)

Section II(h) of the exemption states: ''[t]he term 'UBS QPAM' means UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, UBS O'Connor LLC, and any future entity within the Asset Management or the Wealth Management Americas divisions of UBS, AG that qualifies as a 'qualified professional asset manager' (as defined in Section VI(a) of PTE 84–14) and that relies on the relief provided by PTE 84–14 or represents to ERISA-covered plans and IRAs that it qualifies as a QPAM and with respect to which UBS, AG is an 'affiliate' (as defined in Part VI(d) of PTE 84–14). The term 'UBS QPAM' excludes UBS, AG and UBS Securities Japan'' (footnote omitted).

The Department is revising Section II(h) of the exemption by deleting the phrase ''or represents to ERISA-covered plans and IRAs that it qualifies as a QPAM.'' As revised, Section II(h) now reads, ''The term 'UBS QPAM' means UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, UBS O'Connor LLC, and any future entity within the Asset Management or the Wealth Management Americas divisions of UBS that qualifies as a 'qualified professional asset manager' (as defined in Section VI(a) [17] of PTE 84–14) and that relies on the relief provided by PTE 84–14 and with respect to which UBS is an 'affiliate' (as defined in Part VI(d) of PTE 84–14). The term 'UBS QPAM' excludes UBS and UBS Securities Japan.''

FOR FURTHER INFORMATION CONTACT: Mr. Brian Mica of the Department, telephone (202) 693–8402. (This is not a toll-free number).

Lyssa E. Hall,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2018–03396 Filed 2–16–18; 8:45 am]

BILLING CODE 4510–29–P

[17] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0185]

Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Standard on Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts). The purpose of the requirements is to reduce workers' risk of death or serious injury by ensuring that aerial lifts are in safe operating condition.

DATES: Comments must be submitted (postmarked, sent, or received) by April 23, 2018.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0185, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier services) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., E.T.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2011–0185) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the docket without change and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading

in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other materials in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Charles McCormick or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Manufacturer's Certification of Modifications (§ 1910.67(b)(2)). The Standard requires that when aerial lifts are ''field modified'' for uses other than those intended by the manufacturer, the manufacturer or other equivalent entity, such as a nationally recognized testing laboratory, must certify in writing that the modification is in conformity with all applicable provisions of ANSI A92.2–1969 and the OSHA standard and that the modified aerial lift is at least as safe as the equipment was before modification. Employers are to maintain the certification record and make it available to OSHA compliance officers upon request. This record provides assurance to employers, workers, and compliance officers that the modified aerial lift is safe for use, thereby preventing failure while workers are being elevated. The certification record also provides the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

There are no adjustments or program changes associated with this package.

Type of Review: Extension of a currently approved collection.

Title: Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts) (29 CFR 1910.67).

OMB Control Number: 1218–0230.

Affected Public: Business or other for-profits.

Number of Respondents: 1,000.

Number of Responses: 1,000.

Frequency of Responses: On occasion.

Average Time per Response: Various.

Estimated Total Burden Hours: 20.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other materials must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0185). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov*.

Website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on February 13, 2018.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2018–03371 Filed 2–16–18; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Fiscal Year 2016 Agency Inventories Under the Federal Activities Inventory Reform Act

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of public availability of Agency Inventories of Activities that are not inherently Governmental and of Activities that are inherently Governmental.

SUMMARY: The Federal Activities Inventory Reform (FAIR) Act, requires agencies to develop inventories each year of activities performed by their employees that are not inherently governmental functions. The FAIR Act further requires OMB to review the inventories in consultation with the agencies. Once that review is complete, agencies are required to make the list available to the public and OMB must publish a notice of public availability in the **Federal Register**. In accordance with the FAIR Act, OMB is publishing this notice to announce the availability of inventories for Fiscal Year (FY) 2016 from the agencies listed below. These inventories identify activities that are not inherently governmental and those activities that are inherently governmental. If an agency has not yet posted its inventory on its website, the agency's point of contact should be able to assist. As provided in the FAIR Act, interested parties who disagree with the agency's initial judgment may challenge the inclusion or the omission of an activity on the list of activities that are not inherently governmental within 30 working days of this Notice and, if not satisfied with this review, may appeal to a higher level within the agency.

John Mulvaney,

Director.

Attachment: FAIR Act Release FY 2016

	Agency	Point of contact	Email	Telephone	Website
			Chief Financial Officer (CFO) Act Agencies		
1.	Department of Commerce.	Virna Winters	*vwinters@doc.gov*	202–482–3483	*www.commerce.gov.*
2.	Department of Defense.	Sara Streff Warren Champ	*Sara.I.Streff.civ@mail.mil* *Warren.Champ@DODIG.MIL*	571–372–6843 703–699–5418	*www.acq.osd.mil.* *http://www.dodig.mil.*
3.	Department of Education.	Michele Moore	*Michele.moore@ed.gov*	202–245–6194	*http://www.ed.gov.*
4.	Department of Energy.	Jeff Davis	*jeff.davis@hq.doe.gov*	202–287–1877	*http://energy.gov.*
5.	Department of Health and Human Services.	William Kim	*William.Kim@hhs.gov*	202–205–1341	*http://www.hhs.gov/.*
6.	Department of Homeland Security.	Katherine Chimera	*katherine.chimera@hq.dhs.gov*	202–447–0177	*www.dhs.gov.*
7.	Department of Housing and Urban Development.	Maria Milligan	*Maria.L.Milligan@HUD.gov*	202–402–6417	*http://portal.hud.gov.*
8.	Department of the Interior.	Samantha Brownstein.	*samantha_brownstein@ios.doi.gov.*	202–513–0699	*www.doi.gov.*
9.	Department of Justice.	Neil Ryder	*Neil.Ryder@usdoj.gov*	202–616–5499	*http://www.justice.gov/.*
10.	Department of Labor	Tanisha Bynum-Frazier.	*bynum.frazier.t@dol.gov*	202–693–4546	*www.dol.gov.*
11.	Department of State	Kenneth Black	*blackkh@state.gov*	202–485–7211	*http://www.state.gov.*
12.	Department of Transportation.	Diane Morrison	*diane.morrison@dot.gov*	202–366–4960	*www.dot.gov.*
13.	Department of the Treasury.	Kim Steide	*kimberly.steide@treasury.gov*	202–622–9490	*http://www.treasury.gov/.*
14.	Department of Veterans Affairs.	Julie Plush	*Julie.Plush@va.gov*	202–297–2166	*http://www.va.gov.*
15.	Environmental Protection Agency.	Jennifer Cranford	*Cranford.Jennifer@epa.gov*	202–564–0798	*www.epa.gov.*
16.	General Services Administration.	James Summers	*James.summers@gsa.gov*	202–322–0453	*www.gsa.gov.*
17.	National Aeronautics and Space Administration.	Dan Walt	*daniel.j.walt@nasa.gov*	202–358–1444	*http://www.nasa.gov/.*
18.	National Science Foundation.	Kurtis Shank	*kshank@nsf.gov*	703–292–2261	*www.nsf.gov.*
19.	Nuclear Regulatory Commission.	Beverly Anker	*beverly.anker@nrc.gov*	301–287–0853	*www.nrc.gov.*
20.	Office of Personnel Management.	Greg Blaszko	*Gregory.Blaszko@opm.gov*	215–861–3051	*http://www.opm.gov/.*
21.	Small Business Administration.	Laura Wages	*laura.wages@sba.gov*	202–205–6156	*www.sba.gov.*
22.	Social Security Administration.	Mary Jo Mullin	*mary.jo.mullin@ssa.gov*	410–966–6068	*www.socialsecurity.gov.*
23.	United States Agency for International Development.	Nancy Sanders Durosseau.	*ndurosseau@usaid.gov*	202–712–4236	*www.usaid.gov.*
24.	United States Department of Agriculture.	Mauricio Lainez	*mauricio.lainez@rma.usda.gov*	202–720–8710	*http://www.usda.gov.*

	Agency	Point of contact	Email	Telephone	Website
			Non-CFO Act Agencies		
1.	Broadcasting Board of Governors.	Chris Luer	*cluer@bbg.gov*	202–203–4608	*www.bbg.gov.*
2.	Commodity Futures Trading Commission.	Alice Macklin	*AMacklin@CFTC.gov*	202–418–5860	*www.cftc.gov.*
3.	Consumer Financial Protection Bureau.	Roland Jacob	*Roland.Jacob@cfpb.gov*	202–435–9625	*www.consumerfinance.gov.*
4.	Consumer Product Safety Commission.	Barbara Denny	*bdenny@cpsc.gov*	301–504–7246	*http://www.cpsc.gov.*
5.	Court Services and Offender Supervision Agency for the District of Columbia.	Paul Girardo	*Paul.Girardo@csosa.gov*	202–220–5718	*https://www.csosa.gov/.*
6.	Defense Nuclear Facilities Safety Board.	Gwendolyn Archer-Pailen.	*gwendolyna@dnfsb.gov*	202–694–7061	*http://www.dnfsb.gov.*
7.	Equal Employment Opportunity Commission.	Christine Nalli	*Christine.nalli@eeoc.gov*	202–663–4316	*http://www.eeoc.gov.*
8.	Farm Credit Administration.	Veronica McCain	*McCainV@fca.gov*	703–883–4031	*www.fca.gov.*
9.	Federal Communications Commission.	Tom Green	*Tom.Green@fcc.gov*	202–418–0116	*www.fcc.gov.*
10.	Federal Election Commission.	Gilbert Ford	*gford@fec.gov*	202–694–1216	*www.fec.gov.*
11.	Federal Energy Regulatory Commission.	Nicole Yates	*Nicole.Yates@ferc.gov*	202–502–6327	*www.ferc.gov.*
12.	Federal Housing Financing Agency.	Natalie Jolly	*Natalie.Jolly@fhfa.gov*	202–649–3781	*www.fhfa.gov.*
13.	Federal Labor Relations Authority.	Mike Jeffries	*mjeffries@flra.gov*	202–218–7982	*http://www.flra.gov.*
14.	Federal Maritime Commission.	Kathleen Keys	*kkeys@fmc.gov*	202–523–5788	*www.fmc.gov.*
15.	Federal Mediation & Conciliation Service.	Paul Voight	*pvoight@fmcs.gov*	202–606–5464	*www.fmcs.gov.*
16.	Federal Retirement Thrift Investment Board.	Sandra Byers	*Sandra.Byers@tsp.gov*	202–864–8664	*http://www.frtib.gov.*
17.	Federal Trade Commission.	Paula Chandler	*Pchandler@ftc.gov*	202–326–2055	*http://www.ftc.gov.*
18.	Holocaust Memorial Museum.	Helen Shepherd	*hshepherd@ushmm.org*	202–488–0400 x396.	*http://www.ushmm.org.*
19.	International Trade Commission.	Debra Bridge	*Debra.Bridge@usitc.gov*	202–205–2004	*www.usitc.gov.*
20.	Merit Systems Protection Board.	Nancie Kebioh-Gray	*nancie.kebioh-gray@mspb.gov*	202–254–4513	*www.mspb.gov.*
21.	National Archives and Records Administration.	Kimberly Richardson	*kimberly.richardson@nara.gov*	301–837–2902	*www.archives.gov.*
22.	National Endowment for the Arts.	Ned Read	*readn@arts.gov*	202–682–5782	*www.arts.gov.*
23.	National Endowment for the Humanities.	Robert Straughter	*rstraughter@neh.gov*	202–606–8237	*www.neh.gov.*
24.	National Labor Relations Board.	Marsha Porter	*Marsha.Porter@nlrb.gov*	202–273–3726	*http://www.nlrb.gov.*
25.	National Transportation Safety Board.	Lisa Kleiner	*Lisa.Kleiner@ntsb.gov*	202–314–6462	*www.ntsb.gov.*
26.	Office of Management and Budget.	Amanda Sousane	*akepko@omb.eop.gov*	202–395–4844	*www.whitehouse.gov.*
27.	Office of Special Counsel.	Ryan Pope	*rpope@osc.gov*	202–804–7105	*http://www.osc.gov/.*
28.	Office of the United States Trade Representative.	Deborah Tidwell	*Deborah_Tidwell@ustr.eop.gov*	202–395–9410	*https://ustr.gov/.*
29.	Peace Corps	Amanda Miesionczek	*amiesionczek@peacecorps.gov*	202–509–6533	*www.peacecorps.gov.*
30.	Railroad Retirement Board.	Keith Earley	*Keith.Earley@rrb.gov*	312–751–4990	*www.rrb.gov.*

	Agency	Point of contact	Email	Telephone	Website
31.	Securities and Exchange Commission.	Melissa Csigi	*csigim@sec.gov*	202–551–7647	*www.sec.gov.*
32.	Selective Service System.	Vernetta Fields	*Vernetta.fields@sss.gov*	703–605–4040	*www.sss.gov.*

[FR Doc. 2018–03349 Filed 2–16–18; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

60-Day Notice for the "NEA Applicant Survey"

AGENCY: National Endowment for the Arts.

ACTION: Notice of proposed collection; comment request.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data is 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 is properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection of an NEA applicant survey. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below within 60 days from the date of this publication in the **Federal Register**. The NEA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Can help the agency minimize the burden of the collection of information on those who are to respond, including through the electronic submission of responses.

ADDRESSES: Email comments to Jillian Miller, Director, Office of Guidelines and Panel Operations, National Endowment for the Arts, at: *millerj@arts.gov*.

FOR FURTHER INFORMATION CONTACT: Jillian Miller, Director of Guidelines and Panel Operations, National Endowment for the Arts, at *millerj@arts.gov*.

Dated: February 14, 2018.

Jillian Miller,

Director, Office of Guidelines and Panel Operations Administrative Services, National Endowment for the Arts.

[FR Doc. 2018–03377 Filed 2–16–18; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings Notice

DATE AND TIME: Friday, February 23, 2018 at 1:00 p.m. Changes in date and/or time will be posted at *www.nlrb.gov*.

PLACE: Board Agenda Room, No. 5065, 1015 Half St. SE, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition . . . of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

FOR FURTHER INFORMATION CONTACT: Gary Shinners, Executive Secretary, 1015 Half Street SE, Washington, DC 20570. Telephone: (202) 273–3737.

Dated: February 15, 2018.

Roxanne Rothschild,

Deputy Executive Secretary, National Labor Relations Board.

[FR Doc. 2018–03533 Filed 2–15–18; 4:15 pm]

BILLING CODE 7545–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings Notice

DATE AND TIME: Third Wednesday of every month through Fiscal Year 2018 at 2:00 p.m. Changes in date and time will be posted at *www.nlrb.gov*.

PLACE: Board Agenda Room, No. 5065, 1015 Half St., SE, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition . . . of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

FOR FURTHER INFORMATION CONTACT: Gary Shinners, Executive Secretary, 1015 Half Street SE, Washington, DC 20570. Telephone: (202) 273–3737.

Dated: February 15, 2018.

Roxanne Rothschild,

Deputy Executive Secretary, National Labor Relations Board.

[FR Doc. 2018–03531 Filed 2–15–18; 4:15 pm]

BILLING CODE 7545–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0028]

Draft Flood Penetration Seal Performance at Nuclear Power Plants; Literature Review (Task 1.1) and Test Methodology (Task 1.2)

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft literature review and test methodology; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting public comment on Task 1.1 and Task 1.2 of the project entitled, ''Flood Penetration Seal Performance at Nuclear Power Plants,'' in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing this document is available to the NRC staff.

DATES: Submit comments by March 22, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0028. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Thomas Aird, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2442; email: *thomas.aird@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0028 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0028.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The draft Task 1.1, ''Flood Penetration Seal Assemblies at Operating Nuclear Power Plants,'' is available in ADAMS under Accession No. ML18043B094. The draft Task 1.2, ''Draft Methodology for Testing Flood Penetration Seals,'' is available in ADAMS under Accession No. ML18043B093.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0028 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

The objective of this research project is to characterize flood penetration seals currently installed at nuclear power plants (NPPs) and to develop a draft test methodology that evaluates the effectiveness and performance of flood penetration seals in their installed configurations. This work will support NRC staff's development and implementation of interim staff guidance on estimating the flooding potential of installed penetration seals and the amount of water flow through them. It will provide additional support to site-specific reviews of licensee flood hazard and mitigation strategy submittals.

There is currently no nationally recognized testing standard to evaluate the performance of penetration seals to prevent or limit flooding. This penetration seal flood test methodology is intended to support the evaluation of the flood mitigation performance of penetration seals that are installed to protect openings in barriers (walls/floors) that have been otherwise credited as having a flood resistance rating in support of a flood mitigation program at NPPs. In addition, a limited series of flood tests are to be conducted to assess the effectiveness and viability of the developed testing methodology.

Task 1 of this research project consists of two sub-tasks: Task 1.1 (ADAMS Accession No. ML18043B094) and Task 1.2 (ADAMS Accession No. ML18043B093). The first sub-task, Task 1.1, is a literature review of the various seal materials used for flood seal penetrations at NPPs. This summary includes information regarding the size and shape of typical penetrations, the types of substrate medium, and the configurations of the penetrations to permit various piping through the penetrations. The primary source for much this literature review was that which is publically available through ADAMS. Additional sources included plant engineering documents provided to the NRC, Licensee Event Reports (LERs), fire tests, information available from vendors, and other NRC generated documents such as NUREGs, Information Notices (INs), and Inspection Reports.

The second sub-task, Task 1.2, is a draft test methodology proposed for testing the effectiveness and performance of flood seal penetrations. Included within this draft test methodology is the proposed documentation of the testing procedures which itself includes the scope of the test, referenced documents, definition of terminologies, the significance and use of the test procedures, the specimens and test equipment, and the conduct of the test. The overall intent of this draft methodology and subsequent testing (Task 2) is to provide background research and knowledge for the NRC staff or industry that could be used to support the evaluation of the flood mitigation performance of penetration seals. This test methodology may also be used as a starting point or framework for the future development of an industry consensus standard.

The objective of Task 2 of this project will be to test the effectiveness and adaptability of the draft test methodology with a limited series of

flood tests. These flood tests will be conducted on a variety of candidate seal assemblies identified in Task 1.1. A technical letter report describing the testing and the test results will be the deliverable for Task 2. Upon the completion of the work in Tasks 1 and 2, a draft final report detailing the research conducted in Task 1 and 2 will be prepared. This final report is expected to be published as a NUREG document.

This document is not intended for interim use. The NRC will review public comments received on the document, and incorporate suggested changes as appropriate. Consistent with past experimental programs, the final test methodology will be considered a living document.

Changes to the final test methodology can, and likely will be made during the testing phase as insights and observations from the testing develop that would suggest changes are necessary to ensure quality data from experiments is being obtained.

Dated at Rockville, Maryland, this 13th day of February, 2018.

For the Nuclear Regulatory Commission.

Mark Henry Salley,

Chief, Fire and External Hazard Analysis Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2018–03340 Filed 2–16–18; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2017–87; CP2018–168; MC2018–124 and CP2018–169]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 21, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2017–87; *Filing Title:* USPS Notice of Change in Prices Pursuant to Amendment to Priority Mail Contract 279; *Filing Acceptance Date:* February 13, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* February 21, 2018.

2. *Docket No(s).:* CP2018–168; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 9 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* February 13, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* February 21, 2018.

3. *Docket No(s).:* MC2018–124 and CP2018–169; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 75 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 13, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Timothy J. Schwuchow; *Comments Due:* February 21, 2018.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–03389 Filed 2–16–18; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[[Release No. 34–82698; File No. SR–GEMX–2018–05]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Memorialize Functionality Which Is Designed To Assist Members in the Event That They Lose Communication

February 13, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2018, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 memorialize functionality which is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

designed to assist Members in the event that they lose communication with their assigned Specialized Quote Feed (''SQF''),[3] Financial Information eXchange (''FIX''),[4] or Ouch to Trade Options (''OTTO'') [5] Ports due to a loss of connectivity.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to memorialize its detection of loss of connection risk protection, which is applicable to all Members, at GEMX Rule 711(e). This automated process is in effect if a Member's SQF, FIX or OTTO Port loses communication with a Client Application due to a loss of connectivity. This feature is designed to protect GEMX Market Makers [6] and other market participants from inadvertent exposure to excessive risk.

Members currently enter quotes and/or orders utilizing either an SQF, FIX or OTTO Port. SQF is utilized by GEMX Market Makers and FIX and OTTO are utilized by all market participants. These ports are trading system components through which a Member communicates its quotes and/or orders to the Exchange's match engine through the Member's Client Application. The Exchange proposes to define ''Client Application'' as the system component of the Member through which the Member communicates its quotes and orders to the Exchange at proposed Rule 711(e)(i)(E). Under the proposed rule change, an SQF Port would be defined as the Exchange's proprietary system component through which GEMX Market Makers communicate their quotes from the Client Application at proposed Rule 711(e)(i)(B). A FIX Port would be defined as the Exchange's universal system component through which Members communicate their orders from the Member's Client Application at proposed Rule 711(e)(i)(D). An OTTO Port would be defined as the Exchange's proprietary system component through which Members communicate their orders from the Member's Client Application at proposed Rule 711(e)(i)(C). GEMX Market Makers may submit quotes to the Exchange from one or more SQF Ports. Similarly, market participants may submit orders to the Exchange from one or more FIX or OTTO Ports. The proposed cancellation feature will be mandatory for each GEMX Market Maker utilizing SQF for the removal of quotes and optional for any market participant utilizing FIX or OTTO for the removal of orders.

When the SQF Port detects the loss of communication with a Member's Client Application because the Exchange's server does not receive a Heartbeat message [7] for a certain period of time (a period of ''nn'' seconds), the Exchange will automatically logoff the Member's affected Client Application and automatically cancel all of the Member's open quotes. Quotes will be cancelled across all Client Applications that are associated with the same GEMX Market Maker ID and underlying issues.

The Exchange proposes to define a ''Heartbeat'' message as a communication which acts as a virtual pulse between the SQF, FIX or OTTO Port and the Client Application at proposed Rule 711(e)(i)(A). The Heartbeat message sent by the Member and subsequently received by the Exchange allows the SQF, FIX or OTTO Port to continually monitor its connection with the Member.

SQF Ports

The Exchange's system has a default time period, which will trigger a disconnect from the Exchange and remove quotes, set to fifteen (15) seconds for SQF Ports. A Member may change the default period of ''nn'' seconds of no technical connectivity to trigger a disconnect from the Exchange and remove quotes to a number between one hundred (100) milliseconds and 99,999 milliseconds for SQF Ports prior to each Session of Connectivity to the Exchange. This feature is enabled for each GEMX Market Maker and may not be disabled.

There are two ways to change the number of ''nn'' seconds: (1) Systematically or (2) by contacting the Exchange's operations staff. If the Member changes the default number of ''nn'' seconds, that new setting shall be in effect throughout the current Session of Connectivity and will then default back to fifteen seconds.[8] The Member may change the default setting prior to each Session of Connectivity. A Session of Connectivity would be defined to mean each time the Member connects to the Exchange's system. If the Member were to connect and then disconnect within a trading day several times, each time the Member disconnected the next session would be a new Session of Connectivity. This definition is proposed at proposed Rule 711(e)(i)(F). The Member may also communicate the time to the Exchange by calling the Exchange's operations staff. If the time period is communicated to the Exchange by calling Exchange operations, the number of ''nn'' seconds selected by the Member shall persist for each subsequent Session of Connectivity until the Member either contacts Exchange operations by phone and changes the setting or the Member selects another time period in the Client Application prior to the next Session of Connectivity.

FIX and OTTO Ports

The Exchange's system has a default time period, which will trigger a disconnect from the Exchange and remove orders, set to thirty (30) seconds for FIX Ports and fifteen (15) seconds for OTTO Ports. The Member may disable the removal of orders feature, but not the disconnect feature. If the Member elects to have its orders removed, in addition to the disconnect for FIX, the Member may determine a time period of no technical connectivity to trigger the disconnect and removal of orders between one (1) second and thirty (30)

[3] SQF is an interface that allows market makers to connect and send quotes, sweeps and auction responses into the Exchange.

[4] FIX is an interface that allows market participants to connect and send orders and auction orders into the Exchange.

[5] OTTO is an interface that allows market participants to connect and send orders, auction orders and auction responses into the Exchange.

[6] The term ''market makers'' refers to ''Competitive GEMX Market Makers'' and ''Primary GEMX Market Makers'' collectively.

[7] It is important to note that the Exchange separately sends a connectivity message to the Member as evidence of connectivity.

[8] The Exchange's system would capture the new setting information that was changed by the Member and utilize the amended setting for that particular session. The setting would not persist beyond the current Session of Connectivity and the setting would default back to 15 seconds for the next session if the Member did not change the setting again.

seconds. If the Member elects to have its orders removed, in addition to the disconnect for OTTO, the Member may determine a time period of no technical connectivity to trigger the disconnect and removal of orders between one hundred (100) milliseconds and 99,999 milliseconds. All orders will be automatically cancelled.

There are two ways to change the number of ''nn'' seconds: (1) Systematically or (2) by contacting the Exchange's operations staff. If the Member changes the default number of ''nn'' seconds, that new setting shall be in effect throughout that Session of Connectivity and will then default back to thirty seconds for FIX Ports or fifteen seconds for OTTO Ports at the end of that session. The Member may change the default setting prior to each Session of Connectivity. The Member may also communicate the time to the Exchange by calling the Exchange's operations staff. If the time period is communicated to the Exchange by calling Exchange operations, the number of ''nn'' seconds selected by the Member shall persist for each subsequent Session of Connectivity until the Member either contacts Exchange operations by phone and changes the setting or the Member selects another time period through the Client Application prior to the next Session of Connectivity.

Similar to SQF Ports, when a FIX or OTTO Port detects the loss of communication with a Member's Client Application for a certain time period (a period of ''nn'' seconds), the Exchange will automatically logoff the Member's affected Client Application and if elected, automatically cancel all orders. The Member may have an order which has routed away prior to the cancellation, in the event that the order returns to the Order Book, because it was either not filled or partially filled, that order will be cancelled.

The disconnect feature is mandatory for FIX and OTTO users however the user has the ability to elect to also enable a removal feature, which will cancel all orders submitted through that FIX or OTTO Port. If the removal of orders feature is not enabled, the system will simply disconnect the FIX and/or OTTO user and not cancel any orders. The FIX and/or OTTO user would have to commence a new Session of Connectivity to add, modify or cancel its orders once disconnected.

The trigger for the SQF, FIX and OTTO Ports is Client Application specific. The automatic cancellation of the GEMX Market Maker's quotes for SQF Ports and open orders, if elected by the Member for FIX or OTTO Ports, entered into the respective SQF, FIX or OTTO Ports via a particular Client Application will neither impact nor determine the treatment of the quotes of other GEMX Market Makers (not associated with the same Market Maker ID) entered into SQF Ports or orders of the same or other Members entered into the FIX or OTTO Ports via a separate and distinct Client Application.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to promote just and equitable principles of trade, 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 imposing this mandatory removal functionality on GEMX Market Makers to prevent disruption in the marketplace and also offering this removal feature to other market participants. Requiring GEMX Market Makers to utilize the disconnect feature will avoid risks associated with inadvertent executions in the event of a loss of connectivity. Other market participants will have the option to either enable or disable the cancellation feature, thereby offering the same risk protections throughout the market.

GEMX Market Makers will be required to utilize this disconnect and removal functionality with respect to SQF Ports. This feature will remove impediments to and improve the mechanism of a free and open market and a national market system aimed at protecting investors and the public interest by requiring GEMX Market Makers quotes to be removed in the event of a loss of connectivity with the Exchange's system. GEMX Market Makers provide liquidity to the market place and have obligations unlike other market participants.[11] This risk feature is important because it will enable GEMX Market Makers to avoid risks associated with inadvertent executions in the event of a loss of connectivity with the Exchange. The proposed rule change is designed to not permit unfair discrimination among market participants, as it would apply uniformly to all GEMX Market Makers utilizing SQF Ports.

The disconnect feature of FIX and OTTO is mandatory, however market participants will have the option to either enable or disable the cancellation feature, which would result in the cancellation of all orders submitted over the applicable FIX or OTTO Port when such port disconnect [sic]. It is appropriate to offer this removal feature as optional to all market participants utilizing FIX or OTTO, because unlike GEMX Market Makers who are required to provide quotes in all products in which they are registered, market participants utilizing FIX or OTTO do not bear the same magnitude of risk of potential erroneous or unintended executions. In addition, market participants utilizing FIX or OTTO may desire their orders to remain on the order book despite a technical disconnect, so as not to miss any opportunities for execution of such orders while the FIX and/or OTTO port is disconnected.

Utilizing a time period for SQF and OTTO Ports of fifteen (15) seconds and permitting GEMX Market Makers and Members to modify the setting to between 100 milliseconds and 99,999 milliseconds is consistent with the Act because the Exchange does not desire to trigger unwarranted logoffs of Members and therefore allows Members the ability to set their time in order to enable the Exchange the authority to disconnect the Member with this feature. Both SQF and OTTO are proprietary system components offered by GEMX. The Exchange believes that the proposed settings for SQF and OTTO are appropriate timeframes. Each GEMX Market Maker and Member has different levels of sensitivity with respect to this disconnect setting and each GEMX Market Maker and Member has their own system safeguards as well. A default setting of fifteen (15) seconds is appropriate to capture the needs of all GEMX Market Makers and Members and high enough not to trigger unwarranted removal of quotes and orders.

Further, GEMX Market Makers and Members are able to customize their settings. The Exchange's proposal to permit a timeframe for SQF and OTTO Ports between 100 milliseconds and 99,999 milliseconds is consistent with the Act and the protection of investors because the purpose of this feature is to mitigate the risk of potential erroneous or unintended executions associated with a loss in communication with a Client Application. Members are able to better anticipate the appropriate time within which they may require prior to a logoff as compared to the Exchange. The Member is being offered a timeframe by the Exchange within which to select the appropriate time. The Exchange does not desire to trigger unwarranted logoffs of Members and therefore permits Members to provide

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* GEMX Rule 804(e).

an alternative time to the Exchange, within the Exchange's prescribed timeframe, which authorizes the Exchange to disconnect the Member. The ''nn'' seconds serve as the Member's instruction to the Exchange to act upon the loss of connection and remove quotes from the system, and if elected, orders from the System. This range will accommodate Members in selecting their appropriate times within the prescribed timeframes.

With respect to SQF, the Exchange's proposal is further consistent with the Act because it will mitigate the risk of potential erroneous or unintended executions associated with a loss in communication with a Client Application which protects investors and the public interest. Also, any interest that is executable against a GEMX Market Maker's quotes that is received [12] by the Exchange prior to the trigger of the disconnect to the Client Application, which is processed by the system, automatically executes at the price up to the GEMX Market Maker's size. In other words, the system will process the request for cancellation in the order it was received by the system.

With respect to FIX, a universal system component, the Exchange's proposal would set a default timeframe of thirty (30) seconds and permit a FIX user to modify the timeframe for FIX Ports to between 1 second and 30 seconds for the removal of orders. This proposal is consistent with the Act and the protection of investors because this feature, which is optional, will mitigate the risk of potential erroneous or unintended executions associated with a loss in communication with a Client Application. With respect to the longer timeframe for FIX, as compared to SQF and OTTO, the Exchange notes that unlike SQF and OTTO which are proprietary system components, FIX is a universal component. The settings on FIX remain different given FIX is not a proprietary system component. GEMX Market Makers require a quicker timeframe (15 seconds as compared to 30 seconds). GEMX Market Makers have quoting obligations [13] and are more sensitive to price movements as compared to other market participants. It is consistent with the Act to provide a longer timeframe within which to customize settings for FIX as compared to SQF Ports because GEMX Market Makers need to remain vigilant of market conditions and react more quickly to market movements as compared to other Members entering orders into the system. The proposal acknowledges this sensitivity borne by GEMX Market Makers and reflects the reaction time of GEMX Market Makers as compared to Members entering orders. Of note, the proposed customized timeframe for FIX might be too long for GEMX Market Makers given their quoting requirements and sensitivity to price movements. GEMX Market Makers would be severely impacted by a loss of connectivity of more than several seconds. The GEMX Market Maker would have exposure during the time period in which they are unable to manage their quote and update that quote. The Member is best positioned to determine their setting. With respect to other market participants that enter orders, they have the option of selecting either OTTO or FIX and therefore are able to obtain a shortened timeframe with OTTO if they desire.

The system operates consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS. Specifically, with respect to GEMX Market Makers, their obligation to provide continuous two-sided quotes on a daily basis is not diminished by the automatic removal of such quotes triggered by the disconnect. GEMX Market Makers are required to provide continuous two-sided quotes on a daily basis.[14] GEMX Market Makers will not be relieved of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a GEMX Market Maker for failing to meet the continuous quoting obligation each trading day as a result of disconnects.

With respect to FIX and OTTO Ports, the Exchange will offer this optional removal functionality to all market participants. Offering the removal feature on a voluntary basis to all other market participants is consistent with the Act because it permits them an opportunity to utilize this risk feature, if desired, and avoid risks associated with inadvertent executions in the event of a loss of connectivity with the Exchange. The removal feature is designed to mitigate the risk of missed and/or unintended executions associated with a loss in communication with a Client Application. The proposed rule change is designed to not permit unfair discrimination among market participants, as this optional removal feature will be offered uniformly to all Members utilizing FIX and/or OTTO.

The Exchange will disconnect Members from the Exchange and not cancel a Member's orders if the removal feature is disabled. The disconnect feature is mandatory and will cause the Member to be disconnected within the default timeframe or the timeframe otherwise specified by the Member. This feature is consistent with the Act because it enables FIX and OTTO users the ability to disconnect from the Exchange, assess the situation and make a determination concerning their risk exposure. The Exchange notes that in the event that orders need to be removed, the Member may elect to utilize the Kill Switch [15] feature. The Exchange believes that it is consistent with the Act to require other market participants to be disconnected because the participant is otherwise not connected to the Exchange's system and the Member simply needs to reconnect to commence submitting and cancelling orders. The Exchange believes requiring a disconnect when a loss of communication is detected is a rational course of action for the Exchange to alert the Member of the technical connectivity issue.

The proposed rule change will help maintain a fair and orderly market which promotes efficiency and protects investors. This mandatory removal feature for GEMX Market Makers and optional removal for all other market participants will mitigate the risk of potential erroneous or unintended executions associated with a loss in communication with a Client Application.

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. Specifically, the Exchange does not believe the proposed rule change will cause an undue burden on intra-market competition because GEMX Market Makers, unlike other market participants, have greater risks in the market place. Quoting across many series in an option creates large principal positions that expose GEMX Market Makers, who are required to continuously quote in assigned options, to potentially significant market risk. Providing a broader timeframe for the disconnect and removal of orders for FIX as compared to the removal of quotes for SQF Ports and OTTO orders does not create an undue burden on competition because GEMX Market

[12] The time of receipt for an order or quote is the time such message is processed by the Exchange book.

[13] *See* note 11 above.

[14] *See* note 11 above.

[15] *See* GEMX Rule 711(d).

Makers have quoting obligations [16] and are more sensitive to price movements as compared to other market participants. GEMX Market Makers need to remain vigilant of market conditions and react more quickly to market movements as compared to other Members entering multiple orders into the system. The proposal reflects this sensitivity borne by GEMX Market Makers and reflects the reaction time of GEMX Market Makers as compared to other Members entering orders. With respect to other market participants that enter orders, they have the option of selecting either OTTO or FIX and therefore are able to obtain a shortened timeframe with OTTO if they desire.

Offering the removal feature to other market participants on an optional basis does not create an undue burden on intra-market competition because unlike GEMX Market Makers, other market participants do not bear the same risks of potential erroneous or unintended executions. FIX and OTTO users have the opportunity to disable the cancellation feature and simply disconnect from the Exchange. FIX and OTTO users may also set a timeframe that is appropriate for their business. It is appropriate to offer this optional cancellation functionality to other market participants for open orders, because those orders are subject to risks of missed and/or unintended executions due to a lack of connectivity which the participants needs to weigh. Finally, the Exchange does not believe that such change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. Other options exchanges offer similar functionality.[17]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

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–GEMX–2018–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2018–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2018–05, and should be submitted on or before March 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

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[16] *See* note 11 above.

[17] *See* Phlx Rule 1019(c), NOM Rules at Chapter VI, Section 6(e) and BX Rules at Chapter VI, Section 6(e).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change 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.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82704; File No. SR–BX–2018–008]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Short Term Option Series Program

February 13, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 8, 2018, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand the Short Term Option Series Program to allow Monday expirations for options listed pursuant to the Short Term Option Series Program, including

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

options on the SPDR S&P 500 ETF Trust.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the BX rules at Chapter I, Section 1 and Chapter IV, Section 6 at Commentary .07 to expand the Short Term Option Series program (''Program'') to permit the listing and trading of options series with Monday expirations that are listed pursuant to the Program, including options on the SPDR S&P 500 ETF Trust (''SPY'').

The Exchange notes that having Monday expirations is not a novel proposal. Specifically, Nasdaq PHLX LLC (''Phlx'') recently received approval to list Monday expirations for SPY options pursuant to its Short Terms Options Series program.[3]

As set forth in Chapter I, Section 1(a)(60), a Short Term Option Series is a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Wednesday or Friday of the next business week. The Exchange is now proposing to amend Chapter I, Section 1(a)(60) to permit the listing of options series that expire on Mondays. Specifically, the Exchange is proposing that it may open for trading series of options on any Monday that is a business day and that expires on the Monday of the next business week. The Exchange is also proposing to list Monday expirations series on Fridays that precede the expiration Monday by one business week plus one business day. Since Chapter I, Section 1(a)(60) already provides for the listing of short term option series on Fridays, the Exchange is not modifying this provision to allow for Friday listing of Monday expiration series. However, the Exchange is amending Chapter I, Section 1(a)(60) to clarify that, in the case of a series that is listed on a Friday and expires on a Monday, that series must be listed one business week and one business day prior to that expiration (*i.e.,* two Fridays prior to expiration).

As part of this proposal, the Exchange is also amending Chapter I, Section 1(a)(60) to address the expiration of Monday expiration series when the Monday is not a business day. In that case, the rule will provide that the series shall expire on the first business day immediately following that Monday. This procedure differs from the expiration date of Wednesday expiration series that are scheduled to expire on a holiday. In that case, the Wednesday expiration series shall expire on the first business day immediately prior to that Wednesday, *e.g.,* Tuesday of that week.[4] However, the Exchange believes that it is preferable to require Monday expiration series in this scenario to expire on the Tuesday of that week rather than the previous business day, *e.g.,* the previous Friday, since the Tuesday is closer in time to the scheduled expiration date of the series than the previous Friday, and therefore may be more representative of anticipated market conditions. The Exchange notes that this provision is identical to the corresponding provision recently adopted by Phlx in its proposal to list options series with Monday expirations pursuant to its Short Term Option Series program. The Exchange also notes that Cboe Exchange, Inc. (''Cboe'') uses the same procedure for options on the S&P 500 index (''SPX'') with Monday expirations that listed pursuant to its Nonstandard Expirations Pilot Program and that are scheduled to expire on a holiday.[5]

The Exchange also proposes to make corresponding changes to Commentary .07 to Chapter IV, Section 6, which sets forth the requirements for SPY options that are listed pursuant to the Short Term Options Series Program, to permit Monday SPY expirations (''Monday SPY Expirations''). Accordingly, the Exchange proposes to amend Commentary .07 to state that, with respect to Monday SPY Expirations, the Exchange may open for trading on any Friday or Monday that is a business day series of options on the SPY to expire on any Monday of the month that is a business day and is not a Monday in which Quarterly Options Series expire, provided that Monday SPY Expirations that are listed on a Friday must be listed at least one business week and one business day prior to the expiration. As with the current rules for Wednesday SPY Expirations, the Exchange will also amend Commentary .07 to state that it may list up to five consecutive Monday SPY Expirations at one time, and may have no more than a total of five Monday SPY Expirations (in addition to a maximum of five Short Term Option Series expirations for SPY expiring on Friday and five Wednesday SPY Expirations). The Exchange will also clarify that, as with Wednesday SPY Expirations, Monday SPY Expirations will be subject to the provisions of this Rule.

The interval between strike prices for the proposed Monday SPY Expirations will be the same as those for the current Short Term Option Series for Wednesday and Friday SPY Expirations. Specifically, the Monday SPY Expirations will have a $0.50 strike interval minimum. As is the case with other options series listed pursuant to the Short Term Option Series, the Monday SPY Expiration series will be P.M.-settled.

Currently, for each option class eligible for participation in the Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class. The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective short term option rules; the Exchange may list these additional series that are listed by other exchanges.[6] This thirty (30) series restriction shall apply to Monday SPY Expiration series as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list SPY options expiring on Mondays.

Finally, the Exchange is amending Commentary .07(b) to Chapter IV, Section 6, which addresses the listing of Short Term Options Series that expire in the same week as monthly or quarterly

[3] *See* Securities Exchange Act Release No. 82611 (February 1, 2018), 83 FR 5473 (February 7, 2018) (SR–Phlx–2017–103).

[4] *See* Chapter I, Section 1(a)(60).

[5] *See* CBOE Rule 24.9(e)(1) (''If the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day. If the Exchange is not open for business on a respective Wednesday or Friday, the normally Wednesday or Friday expiring Weekly Expirations will expire on the previous business day.'')

[6] *See* Chapter IV, Section 6 at Commentary .07(a).

options series. Currently, that rule states that no Short Term Option Series may expire in the same week in which monthly option series on the same class expire (with the exception of Wednesday SPY Expirations) or, in the case of Quarterly Options Series, on an expiration that coincides with an expiration of Quarterly Option Series on the same class. The Exchange is proposing to extend this exemption to Monday SPY Expirations. As with Wednesday SPY Expirations, the Exchange believes that it is reasonable to extend this exemption to Monday SPY Expirations because Monday SPY Expirations and standard monthly options will not expire on the same trading day, as standard monthly options expire on Fridays. Additionally, the Exchange believes that not listing Monday SPY Expirations for one week every month because there was a monthly SPY expiration on the Friday of that week would create investor confusion. As part of this proposal, the Exchange is amending Commentary .07(b) to Chapter IV, Section 6 to clarify that Monday and Wednesday SPY Expirations may expire in the same week as monthly option series in the same class expire, but that no Short Term Option Series may expire on the same day as an expiration of Quarterly Option Series on the same class.

The Exchange does not believe that any market disruptions will be encountered with the introduction of P.M.-settled Monday expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Monday expiration series, including Monday SPY Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire almost every Wednesday and Friday, which provide market participants a tool to hedge special events and to reduce the premium cost of buying protection. The Exchange notes that it has been listing Wednesday expirations pursuant to Chapter I, Section 1 and Chapter IV, Section 6 since 2016.[7] With the exception of Monday expiration series that are scheduled to expire on a holiday, the Exchange does not believe that there are any material differences between Monday expirations and Wednesday or Friday expirations for Short Term Option Series.

The Exchange seeks to introduce Monday expirations to, among other things, expand hedging tools available to market participants and to continue the reduction of the premium cost of buying protection. The Exchange believes that Monday expirations, similar to Wednesday and Friday expirations, will allow market participants to purchase an option based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

As noted above, Phlx recently received approval to list Monday expirations for SPY options pursuant to its Short Terms Options program. In addition, other exchanges currently permit Monday expirations for other options. For example, Cboe lists options on the SPX with a Monday expiration as part of its Nonstandard Expirations Pilot Program.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, 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 Exchange believes the Short Term Option Series Program has been successful to date and that Monday expirations, including Monday SPY Expirations, simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. Similarly, the Exchange believes Monday expirations, including Monday SPY Expirations, should create greater trading and hedging opportunities and flexibility, and will provide customers with the ability to tailor their investment objectives more effectively. As noted above, Phlx recently received approval to list Monday expirations for SPY options pursuant to its Short Terms Options program. In addition, Cboe currently permits Monday expirations for other options with a weekly expiration, such as options on the SPX.

With the exception of Monday expiration series that are scheduled to expire on a holiday, the Exchange does not believe that there are any material differences between Monday expirations, including Monday SPY expirations, and Wednesday or Friday expirations, including Wednesday and Friday SPY Expirations, for Short Term Option Series. The Exchange notes that it has been listing Wednesday expirations pursuant to Chapter I, Section 1 and Chapter IV, Section 6 since 2016. The Exchange believes that it is consistent with the Act to treat Monday expiration series that expire on a holiday differently than Wednesday or Friday expiration series, since the proposed treatment for Monday expiration series will result in an expiration date that is closer in time to the scheduled expiration date of the series, and therefore may be more representative of anticipated market conditions. The Exchange also notes that Cboe uses the same procedure for SPX options with Monday expirations that are listed pursuant to its Nonstandard Expirations Pilot Program and that are scheduled to expire on a holiday.

Given the similarities between Monday SPY Expiration series and Wednesday and Friday SPY Expiration series, the Exchange believes that applying the provisions in Commentary .07 to Chapter IV, Section 6 that currently apply to Wednesday SPY Expirations to Monday SPY Expirations is justified. For example, the Exchange believes that allowing Monday SPY Expirations and monthly SPY expirations in the same week will benefit investors and minimize investor confusion by providing Monday SPY Expirations in a continuous and uniform manner. The Exchange also believes that is appropriate to amend Commentary .07(b) to Chapter IV, Section 6 to clarify that no Short Term Option Series may expire on the same day as an expiration of Quarterly Option Series on the same class. This change will make that provision more consistent with the existing language in Commentary .07 that prohibits Wednesday SPY Expirations from expiring on a Wednesday in which Quarterly Options Series expire.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in Monday expirations, including Monday SPY Expirations, in the same way that it monitors trading in the current Short Term Option Series. The Exchange also represents that it has the necessary systems capacity to support the new options series.

[7] *See* Securities Exchange Act Release No. 78694 (August 26, 2016), 81 FR 60049 (August 31, 2016) (SR–BX–2016–047).

[8] *See* CBOE Rule 24.9(e)(1) (''The Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration.)'').

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

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 notes that having Monday expirations is not a novel proposal, as Phlx has received approval to list Monday expirations for SPY options, and Cboe currently lists and trades short-term SPX options with a Monday expiration. The Exchange does not believe the proposal will impose any burden on intra-market competition, as all market participants will be treated in the same manner under this proposal. Additionally, the Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents the other options exchanges from proposing similar rules to list and trade short-term options series with Monday expirations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b–4(f)(6)(iii) [13] 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 proposal may become operative immediately upon filing. The Commission notes that it recently approved Phlx's substantially similar proposal to list and trade Monday SPY Expirations.[14] The Exchange has stated that waiver of the operative delay will allow the Exchange to list and trade Monday SPY Expirations as soon as possible, and therefore, promote competition among the option exchanges. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, and will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal effective upon filing.[15]

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–2018–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2018–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2018–008 and should be submitted on or before March 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–03312 Filed 2–16–18; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intention 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.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See supra* note 3.

[15] 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).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82700; File No. SR–ISE–2018–13]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Short Term Option Series Program

February 13, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on February 7, 2018, Nasdaq ISE, LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 expand the Short Term Option Series Program to allow Monday expirations for options listed pursuant to the Short Term Option Series Program, including options on the SPDR S&P 500 ETF Trust.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 100(a)(51) and Rule 504, Supplementary Material .02 to expand the Short Term Option Series program (''Program'') to permit the listing and trading of options series with Monday expirations that are listed pursuant to the Program, including options on the SPDR S&P 500 ETF Trust (''SPY'').

The Exchange notes that having Monday expirations is not a novel proposal. Specifically, Nasdaq PHLX LLC (''Phlx'') recently received approval to list Monday expirations for SPY options pursuant to its Short Terms Options Series program.[3]

As set forth in Rule 100(a)(51), a Short Term Option Series is a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Wednesday or Friday of the next business week that is a business day. The Exchange is now proposing to amend Rule 100(a)(51) to permit the listing of options series that expire on Mondays. Specifically, the Exchange is proposing that it may open for trading series of options on any Monday that is a business day and that expires on the Monday of the next business week that is a business day. The Exchange is also proposing to list Monday expirations series on Fridays that precede the expiration Monday by one business week plus one business day. Since Rule 100(a)(51) already provides for the listing of short term option series on Fridays, the Exchange is not modifying this provision to allow for Friday listing of Monday expiration series. However, the Exchange is amending Rule 100(a)(51) to clarify that, in the case of a series that is listed on a Friday and expires on a Monday, that series must be listed one business week and one business day prior to that expiration (*i.e.,* two Fridays prior to expiration).

As part of this proposal, the Exchange is also amending Rule 100(a)(51) to address the expiration of Monday expiration series when the Monday is not a business day. In that case, the rule will provide that the series shall expire on the first business day immediately following that Monday. This procedure differs from the expiration date of Wednesday expiration series that are scheduled to expire on a holiday. In that case, the Wednesday expiration series shall expire on the first business day immediately prior to that Wednesday, *e.g.,* Tuesday of that week.[4] However, the Exchange believes that it is preferable to require Monday expiration series in this scenario to expire on the Tuesday of that week rather than the previous business day, *e.g.,* the previous Friday, since the Tuesday is closer in time to the scheduled expiration date of the series than the previous Friday, and therefore may be more representative of anticipated market conditions. The Exchange notes that this provision is identical to the corresponding provision recently adopted by Phlx in its proposal to list options series with Monday expirations pursuant to its Short Term Option Series program. The Exchange also notes that Cboe Exchange, Inc. (''Cboe'') uses the same procedure for options on the S&P 500 index (''SPX'') with Monday expirations that listed pursuant to its Nonstandard Expirations Pilot Program and that are scheduled to expire on a holiday.[5]

The Exchange also proposes to make corresponding changes to Supplementary Material .02 to Rule 504, which sets forth the requirements for SPY options that are listed pursuant to the Program, to permit Monday SPY expirations (''Monday SPY Expirations''). Accordingly, the Exchange proposes to amend Supplementary Material .02 to state that, with respect to Monday SPY Expirations, the Exchange may open for trading on any Friday or Monday that is a business day series of options on the SPY to expire on any Monday of the month that is a business day and is not a Monday in which Quarterly Options Series expire, provided that Monday SPY Expirations that are listed on a Friday must be listed at least one business week and one business day prior to the expiration. As with the current rules for Wednesday SPY Expirations, the Exchange will also amend Supplementary Material .02 to state that Monday SPY Expirations will not be included in the total of the Short Term Option Expiration Dates. Relatedly, the Exchange proposes to amend Supplementary Material .02 to provide that it may list up to five consecutive Monday SPY Expirations at one time, and may have no more than a total of five Monday SPY Expirations (in addition to a maximum of five Short Term Option Series expirations for SPY expiring on Friday and five Wednesday SPY Expirations). The Exchange will also clarify that, as with Wednesday SPY Expirations, Monday SPY Expirations will be subject to the provisions of this Rule.

The interval between strike prices for the proposed Monday SPY Expirations will be the same as those for the current Short Term Option Series for Wednesday and Friday SPY Expirations. Specifically, the Monday SPY Expirations will have a $0.50 strike interval minimum. As is the case with other options series listed pursuant to the Short Term Option Series, the Monday SPY Expiration series will be P.M.-settled.

Currently, for each option class eligible for participation in the Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class. The thirty (30)

[3] *See* Securities Exchange Act Release No. 82611 (February 1, 2018), 83 FR 5473 (February 7, 2018) (SR–Phlx–2017–103).

[4] *See* Rule 100(a)(51).

[5] *See* CBOE Rule 24.9(e)(1) (''If the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day. If the Exchange is not open for business on a respective Wednesday or Friday, the normally Wednesday or Friday expiring Weekly Expirations will expire on the previous business day.'').

series restriction does not include series that are open by other securities exchanges under their respective short term option rules; the Exchange may list these additional series that are listed by other exchanges.[6] This thirty (30) series restriction shall apply to Monday SPY Expiration series as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list SPY options expiring on Mondays.

Finally, the Exchange is amending Commentary .02(b) to Rule 504 which addresses the listing of Short Term Options Series that expire in the same week as monthly or quarterly options series. Currently, that rule states that no Short Term Option Series may expire in the same week in which monthly option series on the same class expire (with the exception of Wednesday SPY Expirations) or, in the case of Quarterly Options Series, on an expiration that coincides with an expiration of Quarterly Option Series on the same class. The Exchange is proposing to extend this exemption to Monday SPY Expirations. As with Wednesday SPY Expirations, the Exchange believes that it is reasonable to extend this exemption to Monday SPY Expirations because Monday SPY Expirations and standard monthly options will not expire on the same trading day, as standard monthly options expire on Fridays. Additionally, the Exchange believes that not listing Monday SPY Expirations for one week every month because there was a monthly SPY expiration on the Friday of that week would create investor confusion. For this reason, the Exchange is amending Commentary .02(b) to Rule 504 to clarify that Monday and Wednesday SPY Expirations may expire in the same week as monthly option series in the same class expire, but that no Short Term Option Series may expire on the same day as an expiration of Quarterly Option Series on the same class.

The Exchange does not believe that any market disruptions will be encountered with the introduction of P.M.-settled Monday expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Monday expiration series, including Monday SPY Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire almost every Wednesday and Friday, which provide market participants a tool to hedge special events and to reduce the premium cost of buying protection. The Exchange notes that it has been listing Wednesday expirations pursuant to Rule 100 and Rule 504 since 2016.[7] With the exception of Monday expiration series that are scheduled to expire on a holiday, the Exchange does not believe that there are any material differences between Monday expirations and Wednesday or Friday expirations for Short Term Option Series.

The Exchange seeks to introduce Monday expirations to, among other things, expand hedging tools available to market participants and to continue the reduction of the premium cost of buying protection. The Exchange believes that Monday expirations, similar to Wednesday and Friday expirations, will allow market participants to purchase an option based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

As noted above, Phlx recently received approval to list Monday expirations for SPY options pursuant to its Short Terms Options program. In addition, other exchanges currently permit Monday expirations for other options. For example, Cboe lists options on the SPX with a Monday expiration as part of its Nonstandard Expirations Pilot Program.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, 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 Exchange believes the Short Term Option Series Program has been successful to date and that Monday expirations, including Monday SPY Expirations, simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. Similarly, the Exchange believes Monday expirations, including Monday SPY Expirations, should create greater trading and hedging opportunities and flexibility, and will provide customers with the ability to tailor their investment objectives more effectively. As noted above, Phlx recently received approval to list Monday expirations for SPY options pursuant to its Short Terms Options program. In addition, Cboe currently permits Monday expirations for other options with a weekly expiration, such as options on the SPX.

With the exception of Monday expiration series that are scheduled to expire on a holiday, the Exchange does not believe that there are any material differences between Monday expirations, including Monday SPY expirations, and Wednesday or Friday expirations, including Wednesday and Friday SPY Expirations, for Short Term Option Series. The Exchange notes that it has been listing Wednesday expirations pursuant to Rule 100 and Rule 504 since 2016. The Exchange believes that it is consistent with the Act to treat Monday expiration series that expire on a holiday differently than Wednesday or Friday expiration series, since the proposed treatment for Monday expiration series will result in an expiration date that is closer in time to the scheduled expiration date of the series, and therefore may be more representative of anticipated market conditions. The Exchange also notes that Cboe uses the same procedure for SPX options with Monday expirations that are listed pursuant to its Nonstandard Expirations Pilot Program and that are scheduled to expire on a holiday.

Given the similarities between Monday SPY Expiration series and Wednesday and Friday SPY Expiration series, the Exchange believes that applying the provisions in Commentary .02 to Rule 504 that currently apply to Wednesday SPY Expirations to Monday SPY Expirations is justified. For example, the Exchange believes that allowing Monday SPY Expirations and monthly SPY expirations in the same week will benefit investors and minimize investor confusion by providing Monday SPY Expirations in a continuous and uniform manner. The Exchange also believes that is appropriate to amend Commentary .02(b) to Rule 504 to clarify that no Short Term Option Series may expire on the same day as an expiration of Quarterly Option Series on the same class. This change will make that provision more consistent with the existing language in Commentary .02 that prohibits Wednesday SPY Expirations from expiring on a

[6] *See* Supplementary Material .02(a) to Rule 504.

[7] *See* Securities Exchange Act Release No. 78715 (August 29, 2016), 81 FR 60765 (September 2, 2016) (SR–ISE–2016–18).

[8] *See* CBOE Rule 24.9(e)(1) (''The Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration).'').

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

Wednesday in which Quarterly Options Series expire.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in Monday expirations, including Monday SPY Expirations, in the same way that it monitors trading in the current Short Term Option Series. The Exchange also represents that it has the necessary systems capacity to support the new options series.

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 notes that having Monday expirations is not a novel proposal, as Phlx has received approval to list Monday expirations for SPY options, and Cboe currently lists and trades short-term SPX options with a Monday expiration. The Exchange does not believe the proposal will impose any burden on intra-market competition, as all market participants will be treated in the same manner under this proposal. Additionally, the Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents the other options exchanges from proposing similar rules to list and trade short-term options series with Monday expirations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b–4(f)(6)(iii) [13] 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 proposal may become operative immediately upon filing. The Commission notes that it recently approved Phlx's substantially similar proposal to list and trade Monday SPY Expirations.[14] The Exchange has stated that waiver of the operative delay will allow the Exchange to list and trade Monday SPY Expirations as soon as possible, and therefore, promote competition among the option exchanges. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, and will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal effective upon filing.[15] 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–ISE–2018–13 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–ISE–2018–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2018–13 and should be submitted on or before March 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intention 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.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See supra* note 3.

[15] 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).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82699; File No. SR–ISE–2018–12]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Memorialize Functionality Designed To Assist Members in the Event that They Lose Communication

February 13, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2018, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 memorialize functionality which is designed to assist Members in the event that they lose communication with their assigned Specialized Quote Feed (''SQF''),[3] Financial Information eXchange (''FIX''),[4] or Ouch to Trade Options (''OTTO'')[5] Ports due to a loss of connectivity.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to memorialize its detection of loss of connection risk protection, which is applicable to all Members, at ISE Rule 711(e). This automated process is in effect if a Member's SQF, FIX or OTTO Port loses communication with a Client Application due to a loss of connectivity. This feature is designed to protect ISE Market Makers[6] and other market participants from inadvertent exposure to excessive risk.

Members currently enter quotes and/or orders utilizing either an SQF, FIX or OTTO Port. SQF is utilized by ISE Market Makers and FIX and OTTO are utilized by all market participants. These ports are trading system components through which a Member communicates its quotes and/or orders to the Exchange's match engine through the Member's Client Application. The Exchange proposes to define ''Client Application'' as the system component of the Member through which the Member communicates its quotes and orders to the Exchange at proposed Rule 711(e)(i)(E). Under the proposed rule change, an SQF Port would be defined as the Exchange's proprietary system component through which ISE Market Makers communicate their quotes from the Client Application at proposed Rule 711(e)(i)(B). A FIX Port would be defined as the Exchange's universal system component through which Members communicate their orders from the Member's Client Application at proposed Rule 711(e)(i)(D). An OTTO Port would be defined as the Exchange's proprietary system component through which Members communicate their orders from the Member's Client Application at proposed Rule 711(e)(i)(C). ISE Market Makers may submit quotes to the Exchange from one or more SQF Ports. Similarly, market participants may submit orders to the Exchange from one or more FIX or OTTO Ports. The proposed cancellation feature will be mandatory for each ISE Market Maker utilizing SQF for the removal of quotes and optional for any market participant utilizing FIX or OTTO for the removal of orders.

When the SQF Port detects the loss of communication with a Member's Client Application because the Exchange's server does not receive a Heartbeat message[7] for a certain period of time (a period of ''nn'' seconds), the Exchange will automatically logoff the Member's affected Client Application and automatically cancel all of the Member's open quotes. Quotes will be cancelled across all Client Applications that are associated with the same ISE Market Maker ID and underlying issues.

The Exchange proposes to define a ''Heartbeat'' message as a communication which acts as a virtual pulse between the SQF, FIX or OTTO Port and the Client Application at proposed Rule 711(e)(i)(A). The Heartbeat message sent by the Member and subsequently received by the Exchange allows the SQF, FIX or OTTO Port to continually monitor its connection with the Member.

SQF Ports

The Exchange's system has a default time period, which will trigger a disconnect from the Exchange and remove quotes, set to fifteen (15) seconds for SQF Ports. A Member may change the default period of ''nn'' seconds of no technical connectivity to trigger a disconnect from the Exchange and remove quotes to a number between one hundred (100) milliseconds and 99,999 milliseconds for SQF Ports prior to each Session of Connectivity to the Exchange. This feature is enabled for each ISE Market Maker and may not be disabled.

There are two ways to change the number of ''nn'' seconds: (1) Systematically or (2) by contacting the Exchange's operations staff. If the Member changes the default number of ''nn'' seconds, that new setting shall be in effect throughout the current Session of Connectivity and will then default back to fifteen seconds.[8] The Member may change the default setting prior to each Session of Connectivity. A Session of Connectivity would be defined to mean each time the Member connects to the Exchange's system. If the Member were to connect and then disconnect within a trading day several times, each

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] SQF is an interface that allows market makers to connect and send quotes, sweeps and auction responses into the Exchange.

[4] FIX is an interface that allows market participants to connect and send orders and auction orders into the Exchange.

[5] OTTO is an interface that allows market participants to connect and send orders, auction orders and auction responses into the Exchange.

[6] The term ''market makers'' refers to ''Competitive ISE Market Makers'' and ''Primary ISE Market Makers'' collectively.

[7] It is important to note that the Exchange separately sends a connectivity message to the Member as evidence of connectivity.

[8] The Exchange's system would capture the new setting information that was changed by the Member and utilize the amended setting for that particular session. The setting would not persist beyond the current Session of Connectivity and the setting would default back to 15 seconds for the next session if the Member did not change the setting again.

time the Member disconnected the next session would be a new Session of Connectivity. This definition is proposed at proposed Rule 711(e)(i)(F). The Member may also communicate the time to the Exchange by calling the Exchange's operations staff. If the time period is communicated to the Exchange by calling Exchange operations, the number of ''nn'' seconds selected by the Member shall persist for each subsequent Session of Connectivity until the Member either contacts Exchange operations by phone and changes the setting or the Member selects another time period in the Client Application prior to the next Session of Connectivity.

FIX and OTTO Ports

The Exchange's system has a default time period, which will trigger a disconnect from the Exchange and remove orders, set to thirty (30) seconds for FIX Ports and fifteen (15) seconds for OTTO Ports. The Member may disable the removal of orders feature, but not the disconnect feature. If the Member elects to have its orders removed, in addition to the disconnect for FIX, the Member may determine a time period of no technical connectivity to trigger the disconnect and removal of orders between one (1) second and thirty (30) seconds. If the Member elects to have its orders removed, in addition to the disconnect for OTTO, the Member may determine a time period of no technical connectivity to trigger the disconnect and removal of orders between one hundred (100) milliseconds and 99,999 milliseconds. All orders will be automatically cancelled.

There are two ways to change the number of ''nn'' seconds: (1) Systematically or (2) by contacting the Exchange's operations staff. If the Member changes the default number of ''nn'' seconds, that new setting shall be in effect throughout that Session of Connectivity and will then default back to thirty seconds for FIX Ports or fifteen seconds for OTTO Ports at the end of that session. The Member may change the default setting prior to each Session of Connectivity. The Member may also communicate the time to the Exchange by calling the Exchange's operations staff. If the time period is communicated to the Exchange by calling Exchange operations, the number of ''nn'' seconds selected by the Member shall persist for each subsequent Session of Connectivity until the Member either contacts Exchange operations by phone and changes the setting or the Member selects another time period through the Client Application prior to the next Session of Connectivity.

Similar to SQF Ports, when a FIX or OTTO Port detects the loss of communication with a Member's Client Application for a certain time period (a period of ''nn'' seconds), the Exchange will automatically logoff the Member's affected Client Application and if elected, automatically cancel all orders. The Member may have an order which has routed away prior to the cancellation, in the event that the order returns to the Order Book, because it was either not filled or partially filled, that order will be cancelled.

The disconnect feature is mandatory for FIX and OTTO users however the user has the ability to elect to also enable a removal feature, which will cancel all orders submitted through that FIX or OTTO Port. If the removal of orders feature is not enabled, the system will simply disconnect the FIX and/or OTTO user and not cancel any orders. The FIX and/or OTTO user would have to commence a new Session of Connectivity to add, modify or cancel its orders once disconnected.

The trigger for the SQF, FIX and OTTO Ports is Client Application specific. The automatic cancellation of the ISE Market Maker's quotes for SQF Ports and open orders, if elected by the Member for FIX or OTTO Ports, entered into the respective SQF, FIX or OTTO Ports via a particular Client Application will neither impact nor determine the treatment of the quotes of other ISE Market Makers (not associated with the same Market Maker ID) entered into SQF Ports or orders of the same or other Members entered into the FIX or OTTO Ports via a separate and distinct Client Application.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to promote just and equitable principles of trade, 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 imposing this mandatory removal functionality on ISE Market Makers to prevent disruption in the marketplace and also offering this removal feature to other market participants. Requiring ISE Market Makers to utilize the disconnect feature will avoid risks associated with inadvertent executions in the event of a loss of connectivity. Other market participants will have the option to either enable or disable the cancellation feature, thereby offering the same risk protections throughout the market.

ISE Market Makers will be required to utilize this disconnect and removal functionality with respect to SQF Ports. This feature will remove impediments to and improve the mechanism of a free and open market and a national market system aimed at protecting investors and the public interest by requiring ISE Market Makers quotes to be removed in the event of a loss of connectivity with the Exchange's system. ISE Market Makers provide liquidity to the market place and have obligations unlike other market participants.[11] This risk feature is important because it will enable ISE Market Makers to avoid risks associated with inadvertent executions in the event of a loss of connectivity with the Exchange. The proposed rule change is designed to not permit unfair discrimination among market participants, as it would apply uniformly to all ISE Market Makers utilizing SQF Ports.

The disconnect feature of FIX and OTTO is mandatory, however market participants will have the option to either enable or disable the cancellation feature, which would result in the cancellation of all orders submitted over the applicable FIX or OTTO Port when such port disconnect [sic]. It is appropriate to offer this removal feature as optional to all market participants utilizing FIX or OTTO, because unlike ISE Market Makers who are required to provide quotes in all products in which they are registered, market participants utilizing FIX or OTTO do not bear the same magnitude of risk of potential erroneous or unintended executions. In addition, market participants utilizing FIX or OTTO may desire their orders to remain on the order book despite a technical disconnect, so as not to miss any opportunities for execution of such orders while the FIX and/or OTTO port is disconnected.

Utilizing a time period for SQF and OTTO Ports of fifteen (15) seconds and permitting ISE Market Makers and Members to modify the setting to between 100 milliseconds and 99,999 milliseconds is consistent with the Act because the Exchange does not desire to trigger unwarranted logoffs of Members and therefore allows Members the ability to set their time in order to enable the Exchange the authority to disconnect the Member with this feature. Both SQF and OTTO are proprietary system components offered by ISE. The Exchange believes that the proposed settings for SQF and OTTO

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* ISE Rule 804(e).

are appropriate timeframes. Each ISE Market Maker and Member has different levels of sensitivity with respect to this disconnect setting and each ISE Market Maker and Member has their own system safeguards as well. A default setting of fifteen (15) seconds is appropriate to capture the needs of all ISE Market Makers and Members and high enough not to trigger unwarranted removal of quotes and orders.

Further, ISE Market Makers and Members are able to customize their settings. The Exchange's proposal to permit a timeframe for SQF and OTTO Ports between 100 milliseconds and 99,999 milliseconds is consistent with the Act and the protection of investors because the purpose of this feature is to mitigate the risk of potential erroneous or unintended executions associated with a loss in communication with a Client Application. Members are able to better anticipate the appropriate time within which they may require prior to a logoff as compared to the Exchange. The Member is being offered a timeframe by the Exchange within which to select the appropriate time. The Exchange does not desire to trigger unwarranted logoffs of Members and therefore permits Members to provide an alternative time to the Exchange, within the Exchange's prescribed timeframe, which authorizes the Exchange to disconnect the Member. The ''nn'' seconds serve as the Member's instruction to the Exchange to act upon the loss of connection and remove quotes from the system, and if elected, orders from the System. This range will accommodate Members in selecting their appropriate times within the prescribed timeframes.

With respect to SQF, the Exchange's proposal is further consistent with the Act because it will mitigate the risk of potential erroneous or unintended executions associated with a loss in communication with a Client Application which protects investors and the public interest. Also, any interest that is executable against a ISE Market Maker's quotes that is received [12] by the Exchange prior to the trigger of the disconnect to the Client Application, which is processed by the system, automatically executes at the price up to the ISE Market Maker's size. In other words, the system will process the request for cancellation in the order it was received by the system.

With respect to FIX, a universal system component, the Exchange's proposal would set a default timeframe of thirty (30) seconds and permit a FIX user to modify the timeframe for FIX Ports to between 1 second and 30 seconds for the removal of orders. This proposal is consistent with the Act and the protection of investors because this feature, which is optional, will mitigate the risk of potential erroneous or unintended executions associated with a loss in communication with a Client Application. With respect to the longer timeframe for FIX, as compared to SQF and OTTO, the Exchange notes that unlike SQF and OTTO which are proprietary system components, FIX is a universal component. The settings on FIX remain different given FIX is not a proprietary system component. ISE Market Makers require a quicker timeframe (15 seconds as compared to 30 seconds). ISE Market Makers have quoting obligations [13] and are more sensitive to price movements as compared to other market participants. It is consistent with the Act to provide a longer timeframe within which to customize settings for FIX as compared to SQF Ports because ISE Market Makers need to remain vigilant of market conditions and react more quickly to market movements as compared to other Members entering orders into the system. The proposal acknowledges this sensitivity borne by ISE Market Makers and reflects the reaction time of ISE Market Makers as compared to Members entering orders. Of note, the proposed customized timeframe for FIX might be too long for ISE Market Makers given their quoting requirements and sensitivity to price movements. ISE Market Makers would be severely impacted by a loss of connectivity of more than several seconds. The ISE Market Maker would have exposure during the time period in which they are unable to manage their quote and update that quote. The Member is best positioned to determine their setting. With respect to other market participants that enter orders, they have the option of selecting either OTTO or FIX and therefore are able to obtain a shortened timeframe with OTTO if they desire.

The system operates consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS. Specifically, with respect to ISE Market Makers, their obligation to provide continuous two-sided quotes on a daily basis is not diminished by the automatic removal of such quotes triggered by the disconnect. ISE Market Makers are required to provide continuous two-sided quotes on a daily basis.[14] ISE Market Makers will not be relieved of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a ISE Market Maker for failing to meet the continuous quoting obligation each trading day as a result of disconnects.

With respect to FIX and OTTO Ports, the Exchange will offer this optional removal functionality to all market participants. Offering the removal feature on a voluntary basis to all other market participants is consistent with the Act because it permits them an opportunity to utilize this risk feature, if desired, and avoid risks associated with inadvertent executions in the event of a loss of connectivity with the Exchange. The removal feature is designed to mitigate the risk of missed and/or unintended executions associated with a loss in communication with a Client Application. The proposed rule change is designed to not permit unfair discrimination among market participants, as this optional removal feature will be offered uniformly to all Members utilizing FIX and/or OTTO.

The Exchange will disconnect Members from the Exchange and not cancel a Member's orders if the removal feature is disabled. The disconnect feature is mandatory and will cause the Member to be disconnected within the default timeframe or the timeframe otherwise specified by the Member. This feature is consistent with the Act because it enables FIX and OTTO users the ability to disconnect from the Exchange, assess the situation and make a determination concerning their risk exposure. The Exchange notes that in the event that orders need to be removed, the Member may elect to utilize the Kill Switch [15] feature. The Exchange believes that it is consistent with the Act to require other market participants to be disconnected because the participant is otherwise not connected to the Exchange's system and the Member simply needs to reconnect to commence submitting and cancelling orders. The Exchange believes requiring a disconnect when a loss of communication is detected is a rational course of action for the Exchange to alert the Member of the technical connectivity issue.

The proposed rule change will help maintain a fair and orderly market which promotes efficiency and protects investors. This mandatory removal feature for ISE Market Makers and optional removal for all other market

[12] The time of receipt for an order or quote is the time such message is processed by the Exchange book.

[13] *See* note 11 above.

[14] *See* note 11 above.

[15] *See* ISE Rule 711(d).

participants will mitigate the risk of potential erroneous or unintended executions associated with a loss in communication with a Client Application.

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. Specifically, the Exchange does not believe the proposed rule change will cause an undue burden on intra-market competition because ISE Market Makers, unlike other market participants, have greater risks in the market place. Quoting across many series in an option creates large principal positions that expose ISE Market Makers, who are required to continuously quote in assigned options, to potentially significant market risk. Providing a broader timeframe for the disconnect and removal of orders for FIX as compared to the removal of quotes for SQF Ports and OTTO orders does not create an undue burden on competition because ISE Market Makers have quoting obligations [16] and are more sensitive to price movements as compared to other market participants. ISE Market Makers need to remain vigilant of market conditions and react more quickly to market movements as compared to other Members entering multiple orders into the system. The proposal reflects this sensitivity borne by ISE Market Makers and reflects the reaction time of ISE Market Makers as compared to other Members entering orders. With respect to other market participants that enter orders, they have the option of selecting either OTTO or FIX and therefore are able to obtain a shortened timeframe with OTTO if they desire.

Offering the removal feature to other market participants on an optional basis does not create an undue burden on intra-market competition because unlike ISE Market Makers, other market participants do not bear the same risks of potential erroneous or unintended executions. FIX and OTTO users have the opportunity to disable the cancellation feature and simply disconnect from the Exchange. FIX and OTTO users may also set a timeframe that is appropriate for their business. It is appropriate to offer this optional cancellation functionality to other market participants for open orders, because those orders are subject to risks of missed and/or unintended executions due to a lack of connectivity which the participants needs to weigh. Finally, the Exchange does not believe that such change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. Other options exchanges offer similar functionality.[17]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

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–ISE–2018–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2018–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2018–12, and should be submitted on or before March 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

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[16] *See* note 11 above.

[17] *See* Phlx Rule 1019(c), NOM Rules at Chapter VI, Section 6(e) and BX Rules at Chapter VI, Section 6(e).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change 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.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82705; File No. SR–CboeBZX–2018–010]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt BZX Rule 14.11(k) To Permit the Listing and Trading of Managed Portfolio Shares and To List and Trade Shares of the ClearBridge Appreciation ETF, ClearBridge Large Cap ETF, ClearBridge MidCap Growth ETF, ClearBridge Select ETF, and ClearBridge All Cap Value ETF

February 13, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 5, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to adopt BZX Rule 14.11(k) to permit the listing and trading of Managed Portfolio Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules. In addition, the Exchange proposes to list and trade shares of the following under proposed Rule 14.11(k): ClearBridge Appreciation ETF; ClearBridge Large Cap ETF; ClearBridge MidCap Growth ETF; ClearBridge Select ETF; and ClearBridge All Cap Value ETF.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new Rule 14.11(k) for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (''UTP''), of Managed Portfolio Shares, which are securities issued by an actively managed open-end investment management company.[3] In addition, the Exchange proposes to list and trade shares (''Shares'') of the following under proposed Rule 14.11(k): ClearBridge Appreciation ETF; ClearBridge Large Cap ETF; ClearBridge MidCap Growth ETF; ClearBridge Select ETF; and ClearBridge All Cap Value ETF (each, a ''Fund'' and, collectively, the ''Funds'').

Proposed Listing Rules

Proposed Rule 14.11(k)(1) provides that the Exchange will consider for trading, whether by listing or pursuant to UTP, Managed Portfolio Shares that meet the criteria of Rule 14.11(k).

Proposed Rule 14.11(k)(2) provides that Rule 14.11(k) is applicable only to Managed Portfolio Shares and that, except to the extent inconsistent with Rule 14.11(k), or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 14.11(k)(2) provides further that Managed Portfolio Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(k)(2)(A) provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of Managed Portfolio Shares. All statements or representations contained in such rule filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of VIIV, reference asset, and intraday indicative values, and the applicability of Exchange rules specified in the filing shall constitute continued listing requirements for such series of Managed Portfolio Shares. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Proposed Rule 14.11(k)(2)(B) provides that transactions in Managed Portfolio Shares will occur only during Regular Trading Hours.[4]

Proposed Rule 14.11(k)(2)(C) provides that the Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares.

Proposed Rule 14.11(k)(2)(D) provides that Authorized Participants (as defined in the Investment Company's Form N–1A filed with the SEC) creating or redeeming Managed Portfolio Shares will sign an agreement with an agent (''AP Representative'') to establish a confidential account for the benefit of such AP that will deliver or receive all consideration from the issuer in a creation or redemption. An AP Representative may not disclose the consideration delivered or received in a creation or redemption.

Proposed Rule 14.11(k)(2)(E) provides that, if the investment adviser to the investment company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such investment company portfolio. Personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio.

Proposed Rule 14.11(k)(2)(F) provides that, if an AP Representative, the custodian, or pricing verification agent for an Investment Company issuing Managed Portfolio Shares, or any other entity that has access to information concerning the composition and/or changes to such Investment Company's portfolio, is registered as a broker-dealer or affiliated with a broker-dealer, such AP Representative, custodian, pricing,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Managed Portfolio Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment management company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies.

[4] As defined in Rule 1.5(w), the term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

verification agent or other entity will erect and maintain a ''fire wall'' between such AP Representative, custodian, pricing verification agent, or other entity and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio.

Proposed Rule 14.11(k)(3)(A) defines the term ''Managed Portfolio Share'' as a security that (a) is issued by a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified aggregate minimum number of shares equal to a Creation Unit, or multiples thereof, in return for a designated portfolio of securities (and/or an amount of cash) with a value equal to the next determined net asset value; and (c) when aggregated in the same specified aggregate number of shares equal to a Redemption Unit, or multiples thereof, may be redeemed at the request of an AP (as defined in the Investment Company's Form N–1A filed with the Commission), which AP will be paid through a confidential account established for its benefit a portfolio of securities and/or cash with a value equal to the next determined net asset value (''NAV'').

Proposed Rule 14.11(k)(3)(B) defines the term ''Verified Intraday Indicative Value'' (''VIIV'') as the estimated indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Regular Trading Hours. The VIIV is monitored by an Investment Company's pricing verification agent responsible for processing Consolidated Tape best bid and offer quotation information into more than one ''Calculation Engines,'' each of which then calculates a separate intraday indicative value for comparison by the pricing verification agent based on the mid-point of the highest bid and lowest offer for the portfolio constituents of a series of Managed Portfolio Shares. A single VIIV will be disseminated publicly during Regular Trading Hours for each series of Managed Portfolio Shares; and the pricing verification agent will continuously compare the publicly-disseminated VIIV against one or more non-public alternative intra-day indicative values to which the pricing verification agent has access.[5]

Proposed Rule 14.11(k)(3)(C) defines the term ''Creation Unit'' as a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an AP in return for a designated portfolio of securities (and/or an amount of cash) specified each day consistent with the Investment Company's investment objectives and policies.

Proposed Rule 14.11(k)(3)(D) defines the term ''Redemption Unit'' as a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an AP in return for a portfolio of securities and/or cash.

Proposed Rule 14.11(k)(3)(E) defines the term ''Reporting Authority'' in respect of a particular series of Managed Portfolio Shares as the Exchange, the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), an institution, or a reporting service designated by the issuer of a series of Managed Portfolio Shares as the official source for calculating and reporting information relating to such series, including, the net asset value, or other information (with the exception of the VIIV) relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.11(k)(4)(F) defines the term ''normal market conditions'' as including, but not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Rule 14.11(k)(4) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Rule 14.11(k)(4)(A)(i) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 14.11(k)(4)(A)(ii) provides that the Exchange will obtain a representation from the issuer of each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time.[6] Proposed Rule 14.11(k)(4)(A)(iii) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

Proposed Rule 14.11(k)(4)(B) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the following continued listing criteria. Proposed Rule 14.11(k)(4)(B)(i) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors every second during Regular Trading Hours and will be disseminated to all market participants at the same time. Proposed Rule 14.11(k)(4)(B)(ii) provides that the Exchange will maintain surveillance procedures for securities listed under Rule 14.11(k) and will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 of, a series of Managed Portfolio Shares under any of the following circumstances: (a) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares; (b) if the value of the VIIV is no longer calculated or available to all market participants at the same time; (c) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Securities and Exchange Commission to the Investment Company with respect to the

[5] Each Calculation Engine is a computer that receives a file from a real-time quote feed, calculates a price for the securities in the portfolio, and aggregates the weights of the securities in the portfolio to produce an intra-day indicative value.

[6] Proposed Rule 14.11(k)(4) provides that if the Exchange becomes aware that the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

series of Managed Portfolio Shares; (d) if any of the continued listing requirements set forth in Rule 14.11(k) are not continuously maintained; (e) if the Exchange submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Managed Portfolio Shares and any of the statements or representations contained in such rule filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of VIIV, reference asset, and intraday indicative values, and the applicability of Exchange rules specified in the filing are not continuously maintained; or (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 14.11(k)(4)(B)(iii) provides that, upon notification to the Exchange by the Investment Company or its agent that (i) the intraday indicative values calculated by more than one Calculation Engines to be compared by the Investment Company's pricing verification agent differ by more than 25 basis points for 60 seconds in connection with pricing of the VIIV, or (ii) that the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one-second intervals, as required, the Exchange shall halt trading in the Managed Portfolio Shares as soon as practicable. Such halt in trading shall continue until the Investment Company or its agent notifies the Exchange that the intraday indicative values calculated by the Calculation Engines no longer differ by more than 25 basis points for 60 seconds or that the VIIV is being calculated and disseminated as required. The Investment Company or its agent shall be responsible for monitoring that the VIIV is being priced and disseminated as required and whether the intraday indicative values to be calculated by more than one Calculation Engines differ by more than 25 basis points for 60 seconds. In addition, if the Exchange becomes aware that the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

Proposed Rule 14.11(k)(4)(B)(iv) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 14.11(k)(4)(B)(v) provides that voting rights shall be as set forth in the applicable Investment Company prospectus.

Proposed Rule 14.11(k)(5), which relates to limitation of Exchange liability, provides that Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Portfolio Shares; the VIIV; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Key Features of Managed Portfolio Shares

While funds issuing Managed Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Managed Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under Rule 14.11(i) [7] and for which a ''Disclosed Portfolio'' is required to be disseminated at least once daily,[8] the portfolio for an issue of Managed Portfolio Shares will be disclosed quarterly in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.[9] The composition of the portfolio of an issue of Managed Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of shares in ''Creation Unit'' or ''Redemption Unit'' size (as described below), the delivery of any portfolio securities in kind will be effected through a ''Confidential Account'' (as described below) for the benefit of the redeeming Authorized Participant (''AP'') (as described below in ''Creation and Redemption of Shares'') without disclosing the identity of such securities to the AP.

For each series of Managed Portfolio Shares, an estimated value—the VIIV—that reflects an estimated intraday value of a fund's portfolio will be disseminated. With respect to the Funds, the VIIV will be based upon all of a Fund's holdings as of the close of the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, and will be widely disseminated by one or more major market data vendors every second during Regular Trading Hours. The dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.

The Exchange, after consulting with various Lead Market Makers that trade exchange-traded funds (''ETFs'') on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the VIIV as long as

[7] The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under Rule 14.11(i). *See, e.g.,* Securities Exchange Act Release Nos. 74193 (February 3, 2015), 80 FR 7066 (February 9, 2015) (SR–BATS–2014–054) (order approving the listing and trading of the iShares Short Maturity Municipal Bond Fund); 74297 (February 18, 2015), 80 FR 9788 (February 24, 2015) (SR–BATS–2014–056) (order approving the listing and trading of iShares U.S. Fixed Income Balanced Risk Fund). More recently, the Commission approved a proposed rule change to adopt generic listing standards for Managed Fund Shares. *See* Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016 (SR–BATS–2015–100) (order approving proposed rule change to amend Rule 14.11(i) to adopt generic listing standards for Managed Fund Shares).

[8] BZX Rule 14.11(i)(3)(B) defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. Rule 14.11(i)(4)(B)(ii)(a) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

[9] A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR under the 1940 Act, and is required to file its complete portfolio schedules for the first and third fiscal quarters on Form N–Q under the 1940 Act, within 60 days of the end of the quarter. Form N–Q requires funds to file the same schedules of investments that are required in annual and semi-annual reports to shareholders. These forms are available to the public on the Commission's website at *www.sec.gov*.

a VIIV is disseminated every second, and market makers employ market making techniques such as ''statistical arbitrage,'' including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.[10] This ability should permit market makers to make efficient markets in an issue of Managed Portfolio Shares without precise knowledge of a Fund's underlying portfolio.[11]

On each ''Business Day'' (as defined below), before commencement of trading in Shares on the Exchange, the Funds will provide to an ''AP Representative'' (as described below) of each AP the identities and quantities of portfolio securities that will form the basis for a Fund's calculation of NAV per Share at the end of the Business Day, as well as the names and quantities of the instruments comprising a ''Creation Basket'' or the ''Redemption Instruments'' and the estimated ''Balancing Amount'' (if any) (as described below), for that day. This information will permit APs to purchase ''Creation Units'' or redeem ''Redemption Units'' through an in-kind transaction with a Fund, as described below.

Using various trading methodologies such as statistical arbitrage, both APs and ''Non-AP Market Makers'' will be able to hedge exposures by trading correlative portfolios, securities or other proxy instruments, thereby enabling an arbitrage functionality throughout the trading day. For example, if an AP believes that Shares of a Fund are trading at a price that is higher than the value of its underlying portfolio based on the VIIV, the AP may sell Shares short and purchase securities that the AP believes will track the movements of a Fund's Shares until the spread narrows and the AP executes offsetting orders or the AP enters an order with its AP Representative to create Fund Shares. Upon the completion of the Creation Unit, the AP will unwind its correlative hedge. A non-AP Market Maker would be able to perform the same function but would be required to employ an AP to create or redeem Shares on its behalf.

The AP Representative's execution of a Creation Unit in a Confidential Account,[12] combined with the sale of Fund Shares, may create downward pressure on the price of Shares and/or upward pressure on the price of the portfolio securities, bringing the market price of Shares and the value of a Fund's portfolio securities closer together. Similarly, an AP could buy Shares and instruct the AP Representative to redeem Fund Shares and liquidate underlying portfolio securities in a Confidential Account. The AP's purchase of a Fund's Shares in the secondary market, combined with the liquidation of the portfolio securities from its Confidential Account by an AP Representative, may also create upward pressure on the price of Shares and/or downward pressure on the price of portfolio securities, driving the market price of Shares and the value of a Fund's portfolio securities closer together. The ''Adviser'' (as defined below) represents that it understands that, other than the confidential nature of the account, this process is identical to how many APs currently arbitrage existing traditional ETFs.

APs can engage in arbitrage by creating or redeeming Shares if the AP believes the Shares are overvalued or undervalued. As discussed above, the trading of a Fund's Shares and the creation or redemption of portfolio securities may bring the prices of a Fund's Shares and its portfolio assets closer together through market pressure.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market makers may use the knowledge of a Fund's means of achieving its investment objective, as described in the applicable Fund registration statement, to construct a hedging proxy for a Fund to manage a market maker's quoting risk in connection with trading Fund Shares. Market makers can then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and Shares of a Fund, buying and selling one against the other over the course of the trading day. They will evaluate how their proxy performed in comparison to the price of a Fund's Shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers have indicated to the Exchange that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U. S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

Description of the Funds and the Trust

The Shares of each Fund will be issued by Precidian ETF Trust II (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[13] The investment adviser to the Trust will be Precidian Funds LLC (the ''Adviser''). The Sub-Adviser to each of the Funds will be ClearBridge Investments, LLC (the ''Sub-Adviser'' or ''ClearBridge'') Legg Mason Investor Services, LLC (the ''Distributor'') will

[10] Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making correction where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a Fund and that of another stock.

[11] APs that enter into their own separate Confidential Accounts shall have enough information to ensure that they are able to comply with applicable regulatory requirements. For example, for purposes of net capital requirements, the maximum Securities Haircut applicable to the securities in a Creation Basket, as determined under Rule 15c3–1, will be disclosed daily on each Fund's website.

[12] A Confidential Account is a restricted account owned by an AP and held at a broker-dealer who will act as an AP Representative (execution agent acting on agency basis) on their behalf. The restricted account will be established and governed via contract and used solely for creation and redemption activity, while protecting the confidentiality of the portfolio constituents. For reporting purposes, the books and records of the Confidential Account will be maintained by the AP Representative and provided to the appropriate regulatory agency as required. The Confidential Account will be liquidated daily, so that the account holds no positions at the end of day.

[13] The Trust will be registered under the 1940 Act. On April 4, 2017, the Trust filed a registration statement on Form N–1A relating to the Funds (File No. 811–23246) (the ''Registration Statement''). The Shares will not be listed on the Exchange until an order (''Exemptive Order'') under the 1940 Act has been issued by the Commission with respect to the Exemptive Application. Investments made by the Funds will comply with the conditions set forth in the Exemptive Order. The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement.

serve as the distributor of each of the Fund's Shares. All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of VIIV, reference asset, and intraday indicative values, and the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange.

As noted above, proposed Rule 14.11(k)(2)(E) provides that, if the investment adviser to the investment company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such investment company portfolio.[14] In addition, proposed Rule 14.11(k)(2)(E) further requires personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio. Proposed Rule 14.11(k)(2)(E) is similar to Rule 14.11(i)(7), related to Managed Fund Shares, and Rule 14.11(c)(5)(A)(i), related to Index Fund Shares, except that proposed Rule 14.11(k)(2)(E) relates to the establishment of a ''fire wall'' between the investment adviser and the broker-dealer as applicable to an Investment Company's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. The Sub-Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer and has implemented and will maintain a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a Fund's portfolio.

In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The portfolio for each Fund will consist primarily of long and/or short positions in U.S. exchange-listed securities and shares issued by other U.S. exchange-listed ETFs.[15] All exchange-listed equity securities in which the Funds will invest will be listed and traded on U.S. national securities exchanges.

Description of the Funds

ClearBridge Appreciation ETF

The ClearBridge Appreciation ETF will seek to provide long-term appreciation of shareholders' capital. The Fund will seek to achieve its investment objective by investing primarily in U.S. exchange-listed equity securities. The fund will typically invest in medium and large capitalization companies, but may also invest in small capitalization companies.

ClearBridge Large Cap ETF

The ClearBridge Large Cap ETF will seek long-term capital appreciation. The Fund will seek to achieve its investment objective by taking long and possibly short positions in equity securities or groups of equities that the portfolio managers believe will provide long term capital appreciation. The Fund normally invests at least 80% of its net assets (plus borrowings for investment purposes) in stocks included in the Russell 1000 Index and ETFs that primarily invest in stocks in the Russell 1000 Index. The Fund purchases securities that the Sub-Adviser believes are undervalued, and sells short securities that it believes are overvalued.

ClearBridge Mid Cap Growth ETF

The ClearBridge Mid Cap Growth ETF will seek long-term growth of capital. The Fund will seek to achieve its investment objective by investing primarily in U.S. exchange-listed, publicly traded equity and equity-related securities of U.S. companies or other instruments with similar economic characteristics. The fund may invest in securities of issuers of any market capitalization.

ClearBridge Select ETF

The ClearBridge Select ETF will seek to provide long-term growth of capital. The Fund will seek to achieve its investment objective by investing primarily in U.S. exchange-listed, publicly traded equity and equity-related securities of U.S. companies or other instruments with similar economic characteristics. The fund may invest in securities of issuers of any market capitalization.

ClearBridge All Cap Value ETF

The ClearBridge All Cap Value ETF will seeks long-term capital growth with current income as a secondary consideration. The Fund will seek to achieve its investment objective by investing primarily in common stocks and common stock equivalents, such as preferred stocks and securities convertible into common stocks, of companies the Sub-Adviser believes are undervalued in the marketplace. The Fund may invest up to 25% of its net assets in equity securities of foreign issuers through U.S. exchange-listed depositary receipts.

Other Investments

While each Fund, under normal market conditions, will invest primarily in U.S. exchange-listed securities, as described above, each Fund may invest its remaining assets in other securities and financial instruments, as described below.

According to the Registration Statement, each Fund may enter into repurchase agreements. It will be the policy of the Trust to enter into repurchase agreements only with recognized securities dealers, banks and Fixed Income Clearing Corporation, a

[14] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and the Sub-Adviser and their respective related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[15] For purposes of describing the holdings of the Funds, ETFs include Portfolio Depository Receipts (as described in Rule 14.11(b)); Index Fund Shares (as described in Rule 14.11(c)); and Managed Fund Shares (as described in Rule 14.11(i)). The ETFs in which a Fund will invest all will be listed and traded on national securities exchanges. While the Funds may invest in inverse ETFs, the Funds will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs

securities clearing agency registered with the Commission.

Each Fund may invest up to 5% of its total assets in warrants, rights and options.

Each Fund may invest a portion of its assets in cash or cash equivalents.[16]

Each Fund may invest in the securities of other investment companies (including money market funds) to the extent allowed by law.

Investment Restrictions

Each Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment),[17] consistent with Commission guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are invested in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[18]

According to the Registration Statement, each Fund will seek to qualify for treatment as a Regulated Investment Company (''RIC'') under the Internal Revenue Code.[19]

The Funds will not invest in securities listed on non-U.S. exchanges.

The Shares of each Fund will conform to the initial and continued listing criteria under proposed Rule 14.11(k). The Funds will not invest in futures, forwards or swaps.

Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. While a Fund may invest in inverse ETFs, a Fund will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

Creations and Redemptions of Shares

In connection with the creation and redemption of Creation Units and Redemption Units, the delivery or receipt of any portfolio securities in-kind will be required to be effected through a separate confidential brokerage account (*i.e.,* a Confidential Account) with an AP Representative,[20] which will be a bank or broker-dealer such as broker-dealer affiliates of JP Morgan Chase, State Street Bank and Trust, or Bank of New York Mellon, for the benefit of an AP.[21] An AP must be a Depository Trust Company (''DTC'') Participant that has executed a ''Participant Agreement'' with the Distributor with respect to the creation and redemption of Creation Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP's Confidential Account, for the benefit of the AP without disclosing the identity of such securities to the AP.

Each AP Representative will be given, before the commencement of trading each Business Day (defined below), the ''Creation Basket'' (as described below) for that day. This information will permit an AP that has established a Confidential Account with an AP Representative, to instruct the AP Representative to buy and sell positions in the portfolio securities to permit creation and redemption of Creation Units and Redemption Units.

In the case of a creation, the Authorized Participant would enter into an irrevocable creation order with the Fund and then direct the AP Representative to purchase the necessary basket of portfolio securities. The AP Representative would then purchase the necessary securities in the Confidential Account. In purchasing the necessary securities, the AP Representative would be required, by the terms of the Confidential Account Agreement, to obfuscate the purchase by use of tactics such as breaking the purchase into multiple purchases and transacting in multiple marketplaces. Once the necessary basket of securities has been acquired, the purchased securities held in the Confidential Account would be contributed in-kind to the Fund.

Shares of each Fund will be issued in Creation Units of 5,000 or more Shares. The Funds will offer and sell Creation Units and Redemption Units on a continuous basis at the NAV per Share next determined after receipt of an order in proper form. The NAV per Share of each Fund will be determined as of the close of regular trading on the New York Stock Exchange (''NYSE'') on each day that the NYSE is open. A ''Business Day'' is defined as any day that the Exchange is open for business. The Funds will sell and redeem Creation Units and Redemption Units only on Business Days. The Adviser anticipates that the initial price of a Share will range from $20 to $60, and that the price of a Creation Unit will initially range from $100,000 to $300,000.

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 Redemption Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances described in the Registration Statement, 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'' through the AP Representative in their Confidential

[16] For purposes of this filing, cash equivalents include short-term instruments (instruments with maturities of less than 3 months) of the following types: (i) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

[17] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[18] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933). The Commission recently codified this long standing position in Rule 22e–4. See Investment Company Act Release No. 32315 (October 13, 2016), 81 FR 82142 (November 18, 2016) (adopting requirements for investment company liquidity risk management programs).

[19] 26 U.S.C. 851.

[20] Each AP shall enter into its own separate Confidential Account with an AP Representative.

[21] In the event that an AP Representative is a bank, the bank will be required to have an affiliated broker-dealer to accommodate the execution of hedging transactions on behalf of the holder of a Confidential Account.

Account).[22] 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, and these instruments may be referred to, in the case of either a purchase or a redemption, as the ''Creation Basket.'' [23]

As noted above, each AP will be required to establish a Confidential Account with an AP Representative and transact with each Fund through that Confidential Account.[24] Therefore, before the commencement of trading on each Business Day, the AP Representative of each AP will be provided, on a confidential basis and at the same time as other Authorized Participants, with a list of the names and quantities of the instruments comprising a 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 instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing are referred to as the ''Portfolio Deposit.''

APs will enter into an agreement with an AP Representative to open a Confidential Account, for the benefit of the AP. The AP Representative will serve as an agent between a Fund and each AP and act as a broker-dealer on behalf of the AP. Each day, the Custodian (defined below) will transmit the Fund Constituent file to each AP Representative and, acting on execution instructions from AP, the AP Representative may purchase or sell the securities currently held in a Fund's portfolio for purposes of effecting in-kind creation and redemption activity during the day.[25]

As with the AP, Non-Authorized Participant Market Makers will have the ability to facilitate efficient market making in the Shares. However, Non-Authorized Participant Market Makers will not have the ability to create or redeem shares directly with a Fund. Rather, if a Non-Authorized Participant Market Maker wishes to create Shares in a Fund, it will have to do so through an AP.

Placement of Purchase Orders

Each Fund will issue Shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of Shares will operate in a manner substantially similar to that of other ETFs. Each Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received.

Shares may be purchased from a Fund by an AP for its own account or for the benefit of a customer. The Distributor will furnish acknowledgements to those placing such orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in a Fund's prospectus or Statement of Additional Information (''SAI''). Purchases of Shares will be settled in-kind or cash for an amount equal to the applicable NAV per Share purchased plus applicable ''Transaction Fees,'' as discussed below.

The NAV of each Fund is expected to be determined once each Business Day at a time determined by the Trust's Board of Directors (''Board''), currently anticipated to be as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) (the ''Valuation Time''). Each Fund will establish a cut-off time (''Order Cut-Off Time'') for purchase orders in proper form. To initiate a purchase of Shares, an AP must submit to the Distributor an irrevocable order to purchase such Shares after the most recent prior Valuation Time.

All orders to purchase Creation Units must be received by the Distributor no later than the scheduled closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) in each case on the date such order is placed (''Transmittal Date'') in order for the purchaser to receive the NAV per Share determined on the Transmittal Date. In the case of custom orders made in connection with creations or redemptions in whole or in part in cash, the order must be received by the Distributor, no later than the Order Cut-Off Time.[26] The Distributor will maintain a record of Creation Unit purchases and will send out confirmations of such purchases.[27]

Transaction Fees

The Trust may impose purchase or redemption transaction fees (''Transaction Fees'') in connection with the purchase or redemption of Shares from the Funds. The exact amounts of any such Transaction Fees will be determined by the Adviser. The purpose of the Transaction Fees is to protect the continuing shareholders against possible dilutive transactional expenses, including operational processing and brokerage costs, associated with establishing and liquidating portfolio positions, including short positions, in connection with the purchase and redemption of Shares.

Purchases of Shares—Secondary Market

Only APs will be able to acquire Shares at NAV directly from a Fund through the Distributor. The required payment must be transferred in the manner set forth in a Fund's SAI by the specified time on the second DTC settlement day following the day it is transmitted (the ''Transmittal Date''). These investors and others will also be able to purchase Shares in secondary market transactions at prevailing market prices.

Redemption

Beneficial Owners may sell their Shares in the secondary market. Alternatively, investors that own enough Shares to constitute a Redemption Unit (currently, 25,000 Shares) or multiples thereof may redeem those Shares through the Distributor, which will act as the Trust's representative for redemption. The size

[22] 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 1933 Act.

[23] 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 a Fund and its investors. The Adviser represents that the Funds do not currently anticipate the need to sell or redeem Creation Units entirely on a cash basis.

[24] The Adviser represents that transacting through a Confidential Account is similar to transacting through any broker-dealer account, except that the AP Representative will be bound to keep the names and weights of the portfolio securities confidential. To comply with certain recordkeeping requirements applicable to APs, the AP Representative will maintain and preserve, and make available to the Commission, certain required records related to the securities held in the Confidential Account.

[25] Each Fund will identify one or more entities to enter into a contractual arrangement with the Fund to serve as an AP Representative. In selecting entities to serve as AP Representatives, a Fund will obtain representations from the entity related to the confidentiality of the Fund's Creation Basket portfolio securities, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. In addition, as a broker-dealer, Section 15(g) of the Act requires the AP Representative to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the AP Representative or any person associated with the AP Representative.

[26] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis, as provided in the Registration Statement.

[27] A AP Representative will provide information related to creations and redemption of Creation Units to the Financial Industry Regulatory Authority (''FINRA'') upon request.

of a Redemption Unit will be subject to change. Redemption orders for Redemption Units or multiples thereof must be placed by or through an AP.

Authorized Participant Redemption

The Shares may be redeemed to a Fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by or through an AP (''AP Redemption Order''). Each Fund will establish an Order Cut-Off Time for redemption orders of Redemption Units in proper form. Redemption Units of the Fund will be redeemable at their NAV per Share next determined after receipt of a request for redemption by the Trust in the manner specified below before the Order Cut-Off Time. To initiate an AP Redemption Order, an AP must submit to the Distributor an irrevocable order to redeem such Redemption Unit after the most recent prior Valuation Time but not later than the Order Cut-Off Time. The Order Cut-Off Time for a Fund will ordinarily be its Valuation Time, or may be prior to the Valuation Time if the Board determines that an earlier Order Cut-Off Time for redemption of Redemption Units is necessary and is in the best interests of Fund shareholders.

In the case of a redemption, the Authorized Participant would enter into an irrevocable redemption order, and then immediately instruct the AP Representative to sell the underlying basket of securities that it will receive in the redemption. As with the purchase of securities, the AP Representative would be required to obfuscate the sale of the portfolio securities it will receive as redemption proceeds using similar tactics. The positions in the underlying portfolio securities sold from the Confidential Account would be covered by the in-kind redemption proceeds received by the Confidential Account from the Fund.

Consistent with the provisions of Section 22(e) of the 1940 Act and Rule 22e–2 thereunder, the right to redeem will not be suspended, nor payment upon redemption delayed, except for: (1) Any period during which the NYSE is closed other than customary weekend and holiday closings, (2) any period during which trading on the NYSE is restricted, (3) any period during which an emergency exists as a result of which disposal by a Fund of securities owned by it is not reasonably practicable or it is not reasonably practicable for a Fund to determine its NAV, and (4) for such other periods as the Commission may by order permit for the protection of shareholders.

Redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash.[28] The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption.[29] Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions. While a Fund will generally distribute securities in-kind, the Adviser may determine from time to time that it is not in a Fund's best interests to distribute securities in-kind, but rather to sell securities and/or distribute cash. For example, the Adviser may distribute cash to facilitate orderly portfolio management in connection with rebalancing or transitioning a portfolio in line with its investment objective, or if there is substantially more creation than redemption activity during the period immediately preceding a redemption request, or as necessary or appropriate in accordance with applicable laws and regulations. In this manner, a Fund can use in-kind redemptions to reduce the unrealized capital gains that may, at times, exist in a Fund by distributing low cost lots of each security that a Fund needs to dispose of to maintain its desired portfolio exposures. Shareholders of a Fund would benefit from the in-kind redemptions through the reduction of the unrealized capital gains in a Fund that would otherwise have to be realized and, eventually, distributed to shareholders.

The redemption basket will consist of the same securities for all APs on any given day subject to the Adviser's ability to make minor adjustments to address odd lots, fractional shares, tradeable sizes or other situations.

After receipt of a Redemption Order, a Fund's custodian (''Custodian'') will typically deliver securities to the Confidential Account on a pro rata basis (which securities are determined by the Adviser) with a value approximately equal to the value of the Shares[30] tendered for redemption at the Cut-Off time. The Custodian will make delivery of the securities by appropriate entries on its books and records transferring ownership of the securities to the AP's Confidential Account, subject to delivery of the Shares redeemed. The AP Representative of the Confidential Account will in turn liquidate the securities based on instructions from the AP.[31] The AP Representative will pay the liquidation proceeds net of expenses plus or minus any cash balancing amount to the AP through DTC.[32] The redemption securities that the Confidential Account receives are expected to mirror the portfolio holdings of a Fund pro rata. To the extent a Fund distributes portfolio securities through an in-kind distribution to more than one Confidential Account for the benefit of that account's AP, each Fund expects to distribute a pro rata portion of the portfolio securities selected for distribution to each redeeming AP.

If the AP would receive a security that it is restricted from receiving, a Fund will deliver cash equal to the value of that security. APs and Non-Authorized Participant Market Makers will provide the AP Representative with a list of restricted securities applicable to the AP or Non-Authorized Participant Market Maker on a daily basis, and a Fund will substitute cash for those securities in the applicable Confidential Account.

To address odd lots, fractional shares, tradeable sizes or other situations where dividing securities is not practical or possible, the Adviser may make minor adjustments to the pro rata portion of portfolio securities selected for distribution to each redeeming AP on such Business Day.

The Trust will accept a Redemption Order in proper form. A Redemption Order is subject to acceptance by the Trust and must be preceded or accompanied by an irrevocable commitment to deliver the requisite

[28] It is anticipated that any portion of a Fund's NAV attributable to appreciated short positions will be paid in cash, as securities sold short are not susceptible to in-kind settlement. The value of other positions not susceptible to in-kind settlement may also be paid in cash.

[29] The terms of each Confidential Account will be set forth as an exhibit to the applicable Participant Agreement, which will be signed by each AP. The terms of the Confidential Account will provide that the trust be formed under applicable state laws; the Custodian may act as AP Representative of the Confidential Account; and the AP Representative will be paid by the AP a fee negotiated directly between the APs and the AP Representative(s).

[30] If the NAV of the Shares redeemed differs from the value of the securities delivered to the applicable Confidential Account, the Fund will pay a cash balancing amount to compensate for the difference between the value of the securities delivered and the NAV.

[31] An AP will issue execution instructions to the AP Representative and be responsible for all associated profit or losses. Like a traditional ETF, the AP has the ability to sell the basket securities at any point during normal trading hours.

[32] Under applicable provisions of the Internal Revenue Code, the AP is expected to be deemed a ''substantial owner'' of the Confidential Account because it receives distributions from the Confidential Account. As a result, all income, gain or loss realized by the Confidential Account will be directly attributed to the AP. In a redemption, the AP will have a basis in the distributed securities equal to the fair market value at the time of the distribution and any gain or loss realized on the sale of those Shares will be taxable income to the AP.

number of Shares. At the time of settlement, an AP will initiate a delivery of the Shares versus subsequent payment against the proceeds, if any, of the sale of portfolio securities distributed to the applicable Confidential Account plus or minus any cash balancing amounts, and less the expenses of liquidation.

Independent Pricing Calculations

According to the Exemptive Application, the Pricing Verification Agent, on behalf of each Fund, will utilize at least two separate calculation engines to calculate intra-day indicative values (''Calculation Engines''), based on the mid-point between the current national best bid and offer disseminated by the Consolidated Quotation System (''CQS'') and Unlisted Trading Privileges (''UTP'') Plan Securities Information Processor,[33] to provide the real-time value on a per Share basis of each Fund's holdings every second during the Exchange's Core Trading Session.[34] The Custodian will provide, on a daily basis, the identities and quantities of portfolio securities that will form the basis for the Fund's calculation of NAV at the end of the Business Day,[35] plus any cash in the portfolio, to the Pricing Verification Agent for purposes of pricing.

According to the Exemptive Application, it is anticipated that each Calculation Engine could be using some combination of different hardware, software and communications platforms to process the CQS data. Different hardware platforms' operating systems could be receiving and calculating the CQS data inputs differently, potentially resulting in one Calculation Engine processing the indicative value in a different time slice than another Calculation Engine's system, thus processing values in different sequences. The processing differences between different Calculation Engines will most likely be in the sub-second range. Consequently, the frequency of occurrence of out of sequence values among different Calculation Engines due to differences in operating system environments should be minimal. Other factors that could result in sequencing that is not uniform among the different Calculation Engines are message gapping, internal system software design, and how the CQS data is transmitted to the Calculation Engine. While the expectation is that the separately calculated intraday indicative values will generally match, having dual streams of redundant data that must be compared by the Pricing Verification Agent will provide an additional check that the resulting VIIV is accurate.

According to the Exemptive Application, each Fund's Board has a responsibility to oversee the process of calculating an accurate VIIV and to make an affirmative determination, at least annually, that the procedures used to calculate the VIIV and maintain its accuracy are, in its reasonable business judgment, appropriate.

These procedures and their continued effectiveness will be subject to the ongoing oversight of the Fund's chief compliance officer. The specific methodology for calculating the VIIV will be disclosed on each Fund's website. While each Fund will oversee the calculation of the VIIV, a Fund will utilize multiple Calculation Engines, one of which may be supplied by the Pricing Verification Agent.

Net Asset Value

The NAV per Share of a Fund will be computed by dividing the value of the net assets of a Fund (*i.e.* the value of its total assets less total liabilities) by the total number of Shares of a Fund outstanding, rounded to the nearest cent. Expenses and fees, including, without limitation, the management, administration and distribution fees, will be accrued daily and taken into account for purposes of determining NAV. Interest and investment income on the Trust's assets accrue daily and will be included in the Fund's total assets. The NAV per Share for a Fund will be calculated by a Fund's administrator (''Administrator'') and determined as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) on each day that the NYSE is open.

Shares of exchange-listed equity securities and exchange listed options will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the securities are primarily traded at the time of valuation. Repurchase agreements will be valued based on price quotations or other equivalent indications of value provided by a third-party pricing service. Money market funds will be valued based on price quotations or other equivalent indications of value provided by a third-party pricing service. Cash equivalents will generally be valued on the basis of independent pricing services or quotes obtained from brokers and dealers. Options not listed on an exchange, rights and warrants will be valued based on price quotations or other equivalent indications of value provided by a third-party pricing service.

When last sale prices and market quotations are not readily available, are deemed unreliable or do not reflect material events occurring between the close of local markets and the time of valuation, investments will be valued using fair value pricing as determined in good faith by the Adviser under procedures established by and under the general supervision and responsibility of the Trust's Board of Trustees. Investments that may be valued using fair value pricing include, but are not limited to: (1) Securities that are not actively traded; (2) securities of an issuer that becomes bankrupt or enters into a restructuring; and (3) securities whose trading has been halted or suspended.

The frequency with which each Fund's investments will be valued using fair value pricing will primarily be a function of the types of securities and other assets in which the respective Fund will invest pursuant to its investment objective, strategies and limitations. If the Funds invest in open-end management investment companies registered under the 1940 Act (other than ETFs), they may rely on the NAVs of those companies to value the shares they hold of them.

Valuing the Funds' investments using fair value pricing involves the consideration of a number of subjective factors and thus the prices for those investments may differ from current market valuations. Accordingly, fair value pricing could result in a difference between the prices used to calculate NAV and the prices used to determine a Fund's VIIV, which could result in the market prices for Shares deviating from NAV. In cases where the fair value price of the security is materially different from the midpoint of the bid/ask spread provided to the

[33] According to the Exemptive Application, all Commission-registered exchanges and market centers send their trades and quotes to a central consolidator where the Consolidated Tape System (CTS) and CQS data streams are produced and distributed worldwide. See *https://www.ctaplan.com/index*. Although there is only one source of market quotations, each Calculation Engine will receive the data directly and calculate an indicative value separately and independently from each other Calculation Engine.

[34] The Adviser represents that the dissemination of VIIV at one second intervals strikes a balance of providing all investors with useable information at a rate that can be processed by retail investors, does not provide so much information so as to allow market participants to accurately determine the constituents, and their weightings, of the portfolio, can be accurately calculated and disseminated, and still provides professional traders with per second data.

[35] Under accounting procedures followed by the Funds, trades made on the prior Business Day (T) will be booked and reflected in the NAV on the current Business Day (T+1). Thus, the VIIV calculated throughout the day will be based on the same portfolio as is used to calculate the NAV on that day.

Calculation Engine and the Adviser determined that the ongoing pricing information is not likely to be reliable, the fair value will be used for calculation of the VIIV, and a Fund's Custodian will be instructed to disclose the identity and weight of the fair valued securities, as well as the fair value price being used for the security.

Availability of Information

The Funds' website (*www.precidianfunds.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each Fund that may be downloaded. The Funds' website will include additional quantitative information updated on a daily basis, including, for each Fund, (1) daily trading volume, the prior Business Day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[36] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The website and information will be publicly available at no charge.

As noted above, a mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N-CSR under the 1940 Act, and is required to file its complete portfolio schedules for the first and third fiscal quarters on Form N–Q under the 1940 Act, within 60 days of the end of the quarter. Form N–Q requires funds to file the same schedules of investments that are required in annual and semi-annual reports to shareholders. The Trust's SAI and each Fund's shareholder reports will be available free upon request from the Trust. These documents and forms may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov*.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Updated price information for U.S. exchange-listed equity securities is available through major market data vendors or securities exchanges trading such securities. The intraday, closing and settlement prices of money market funds, repurchase agreements, reverse repurchase agreements and cash equivalents will be readily available from published or other public sources, or major market data vendors such as Bloomberg and Thomson Reuters. The NAV of any investment company security investment will be readily available on the website of the relevant investment company and from major market data vendors. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the VIIV, as defined in proposed Rule 14.11(k)(3)(B) and as described further below, will be widely disseminated by one or more major market data vendors at least every second during Regular Trading Hours.

Dissemination of the VIIV

The VIIV, which is approximate value of each Fund's investments on a per Share basis, will be disseminated every second during Regular Trading Hours. The VIIV should not be viewed as a ''real-time'' update of NAV because the VIIV may not be calculated in the same manner as NAV, which is computed once per day.

The VIIV for each Fund will be disseminated by one or more major market data vendors in one-second intervals during Regular Trading Hours. The VIIV is essentially an intraday NAV calculation at least every second during Regular Trading Hours. Each Fund will adopt procedures governing the calculation of the VIIV. Pursuant to those procedures, the VIIV will include all accrued income and expenses of a Fund and will assure that any extraordinary expenses booked during the day that would be taken into account in calculating a Fund's NAV for that day are also taken into account in calculating the VIIV. For purposes of the VIIV, securities held by a Fund will be valued throughout the day based on the mid-point between the disseminated current national best bid and offer. If the Adviser determines that the mid-point of the bid/ask spread is inaccurate, a Fund will use fair value pricing. That fair value pricing will be carried over to the next day's VIIV until the first trade in that stock is reported unless the Adviser deems a particular portfolio security to be illiquid and/or the available ongoing pricing information unlikely to be reliable. In such case, that fact will be disclosed as soon as practicable on each Fund's website, including the identity and weighting of that security in a Fund's portfolio, and the impact of that security on VIIV calculation, including the fair value price for that security being used for the calculation of that day's VIIV.

The Adviser represents that, by utilizing the mid-point pricing for purposes of VIIV calculation, stale prices are eliminated and more accurate representation of the real time value of the underlying securities is provided to the market. Specifically, quotations based on the mid-point of bid/ask spreads more accurately reflect current market sentiment by providing real time information on where market participants are willing to buy or sell securities at that point in time. Using quotations rather than last sale information addresses concerns regarding the staleness of pricing information of less actively traded securities. Because quotations are updated more frequently than last sale information especially for inactive securities, the VIIV will be based on more current and accurate information. The use of quotations will also dampen the impact of any momentary spikes in the price of a portfolio security.

Each Fund will utilize two separate pricing feeds to provide two separate sources of pricing information. Each Fund will also utilize a ''Pricing Verification Agent'' and establish a computer-based protocol that will permit the Pricing Verification Agent to continuously compare the multiple intraday indicative values from the Calculation Engines on a real time basis.[37] A single VIIV will be disseminated publicly for each Fund; however, the Pricing Verification Agent will continuously compare the public VIIV against a non- public alternative intra-day indicative value to which the Pricing Verification Agent has access. Upon notification to the Exchange by the issuer of a series of Managed Portfolio Shares or its agent that the public VIIV and non-public alternative intra-day indicative value differ by more than 25 basis points for 60 seconds, the Exchange will halt trading as soon as practicable in a Fund until the discrepancy is resolved.[38] Each Fund's

[36] The Bid/Ask Price of a Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of a Fund's NAV. The records relating to Bid/Ask Prices will be retained by each Fund and its service providers.

[37] A Fund's Custodian will provide, on a daily basis, the identities and quantities of portfolio securities that will form the basis for a Fund's calculation of NAV at the end of the Business Day, plus any cash in the portfolio, to the Pricing Verification Agent for purposes of pricing.

[38] A continuous deviation for sixty seconds could indicate an error in the feed or in a Calculation Engine. The Trust reserves the right to change these thresholds to the extent deemed appropriate and approved by a Fund's Board.

Board will review the procedures used to calculate the VIIV and maintain its accuracy as appropriate, but not less than annually. The specific methodology for calculating the VIIV will be disclosed on each Fund's website.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, including whether unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to proposed Rule 14.11(k)(4)(B)(iii), which sets forth circumstances under which Shares of the Funds may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the Exchange only during Regular Trading Hours as provided in proposed Rule 14.11(k)(2)(B). As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price variation for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under Rule 14.11(k). The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A–3 under the Act.[39] A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV per Share of each Fund will be calculated daily and will be made available to all market participants at the same time.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Portfolio Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, underlying stocks, ETFs, and exchange-listed options with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying stocks, ETFs, and exchange-listed options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[40]

The Funds' Adviser will make available daily to FINRA and the Exchange the portfolio holdings of each Fund in order to facilitate the performance of the surveillances referred to above.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular (''Circular'') of the special characteristics and risks associated with trading the Shares. Specifically, the Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares; (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the VIIV is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

In addition, the Circular will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Circular will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Circular will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[41] in general and Section 6(b)(5) of the Act[42] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 14.11(k) is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Managed Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.11(k)(4) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Rule 14.11(k)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading. In addition, the Exchange will obtain a representation from the issuer of each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time. Proposed Rule 14.11(k)(4)(B) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the specified continued listing criteria, as described above. Proposed Rule 14.11(k)(4)(B)(i) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by one or more major market data vendors every second during Regular Trading Hours. Proposed Rule 14.11(k)(4)(B)(iii)

[39] *See* 17 CFR 240.10A–3.

[40] For a list of the current members of ISG, *see www.isgportal.org.*

[41] 15 U.S.C. 78f.

[42] 15 U.S.C. 78f(b)(5).

provides that, upon notification to the Exchange by the Investment Company or its agent that (i) the intraday indicative values calculated from more than one Calculation Engines to be compared by the Investment Company's pricing verification agent differ by more than 25 basis points for 60 seconds in connection with pricing of the VIIV, or (ii) that the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one-second intervals, as required, the Exchange shall halt trading in the Managed Portfolio Shares as soon as practicable. Such halt in trading shall continue until the Investment Company or its agent notifies the Exchange that the intraday indicative values no longer differ by more than 25 basis points for 60 seconds or that the VIIV is being calculated and disseminated as required. Proposed Rule 14.11(k)(2)(E) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Proposed Rule 14.11(k)(2)(F) provides that, if an AP Representative, the custodian or pricing verification agent for an Investment Company issuing Managed Portfolio Shares, or any other entity that has access to information concerning the composition and/or changes to such Investment Company's portfolio, is registered as a broker-dealer or affiliated with a broker-dealer, such AP Representative, custodian, pricing verification agent or other entity will erect and maintain a ''fire wall'' between such AP Representative, custodian, pricing verification agent, or other entity and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio.

With respect to the proposed listing and trading of Shares of the Funds, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 14.11(k). Price information for the exchange-listed equity securities held by the Funds will be available through major market data vendors or securities exchanges listing and trading such securities. All exchange-listed equity securities held by the Funds will be listed on U.S. national securities exchanges. The listing and trading of such securities is subject to rules of the exchanges on which they are listed and traded, as approved by the Commission. The Funds will primarily hold U.S.-listed equity securities and shares issued by other U.S.-listed ETFs. All exchange-listed equity securities in which the Funds will invest will be listed and traded on U.S. national securities exchanges. A Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage. The Funds will not invest in non-U.S.-listed securities. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, underlying stocks, ETFs, and exchange-listed options with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying stocks, ETFs, and exchange-listed options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. An AP Representative will provide information related to creations and redemption of Creation Units and Redemption Instruments to FINRA upon request. The Funds' Adviser will make available daily to FINRA and the Exchange the portfolio holdings of each Fund in order to facilitate the performance of the surveillances referred to above.

The Exchange, after consulting with various Lead Market Makers that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the VIIV, market makers have knowledge of a Fund's means of achieving its investment objective even without daily disclosure of a fund's underlying portfolio. The Exchange believes that market makers will employ risk-management techniques to make efficient markets in exchange traded products. This ability should permit market makers to make efficient markets in shares without knowledge of a fund's underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market makers utilizing statistical arbitrage use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers will then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. Eventually, at the end of each day, they will evaluate how their proxy performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers have indicated to the Exchange that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The Lead Market Makers also indicated that, as with some other new exchange-traded products, spreads would tend to narrow as market makers gain more confidence in the accuracy of their hedges and their ability to adjust these hedges in real-time relative to the published VIIV and gain an understanding of the applicable market risk metrics such as volatility and turnover, and as natural buyers and sellers enter the market. Other relevant factors cited by Lead Market Makers were that a fund's investment objectives are clearly disclosed in the applicable prospectus, the existence of quarterly

portfolio disclosure and the ability to create shares in creation unit size.

The real-time dissemination of a fund's VIIV together with the right of APs to create and redeem each day at the NAV will be sufficient for market participants to value and trade shares in a manner that will not lead to significant deviations between the shares' Bid/Ask Price and NAV.

The pricing efficiency with respect to trading a series of Managed Portfolio Shares will generally rest on the ability of market participants to arbitrage between the shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy shares that they perceive to be trading at a price less than that which will be available at a subsequent time, and sell shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being ''long'' or ''short'' shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets [43] or by netting the exposure against other, offsetting trading positions—much as such firms do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI, along with the dissemination of the VIIV every second, should permit professional investors to engage easily in this type of hedging activity.[44]

With respect to trading of Shares of the Funds, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for a Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on a Fund's actual portfolio holdings, (2) the securities in which the Funds plan to invest are generally highly liquid and actively traded and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

The real-time dissemination of a Fund's VIIV together with the ability of APs to create and redeem each day at the NAV, will be crucial for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Shares' Bid/Ask Price and NAV.[45]

In a typical Index-based ETF, it is standard for APs to know what securities must be delivered in a creation or will be received in a redemption. For Managed Portfolio Shares, however, APs do not need to know the securities comprising the portfolio of a Fund since creations and redemptions are handled through the Confidential Account mechanism. The Adviser represents that the in-kind creations and redemptions through a Confidential Account will preserve the integrity of the active investment strategy and reduce the potential for ''free riding'' or ''front-running,'' while still providing investors with the advantages of the ETF structure.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of an issue of Managed Portfolio Shares that the NAV per share of a fund will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also obtain a fund's SAI, shareholder reports, and its Form N–CSR, Form N–Q and Form N–SAR. A fund's SAI and shareholder reports will be available free upon request from the applicable fund, and those documents and the Form N–CSR, Form N–Q and Form N–SAR may be viewed on-screen or downloaded from the Commission's website. In addition, with respect to the Funds, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated every second throughout Regular Trading Hours by one or more major market data vendors. The website for the Funds will include a form of the prospectus for the Funds that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis.

Moreover, prior to the commencement of trading, the Exchange will inform its members in a Circular of the special characteristics and risks associated with trading the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18, market conditions, or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to proposed Rule 14.11(k)(4)(B)(iii), which sets forth circumstances under which Shares of the Funds will be halted. In addition, as noted above, investors will have ready access to the VIIV, and quotation and last sale information for the Shares. The Shares will conform to the initial and continued listing criteria under proposed Rule 14.11(k). The Funds will not invest in futures, forwards or swaps. Each Fund's investments will be consistent with its investment objective and will not be used to enhance

[43] Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

[44] With respect to trading in Shares of the Funds, market participants would manage risk in a variety of ways. It is expected that market participants will be able to determine how to trade Shares at levels approximating the VIIV without taking undue risk by gaining experience with how various market factors (*e.g.,* general market movements, sensitivity of the VIIV to intraday movements in interest rates or commodity prices, etc.) affect VIIV, and by finding hedges for their long or short positions in Shares using instruments correlated with such factors. The Adviser expects that market participants will initially determine the VIIV's correlation to a major large capitalization equity benchmark with active derivative contracts, such as the Russell 1000 Index, and the degree of sensitivity of the VIIV to changes in that benchmark. For example, using hypothetical numbers for illustrative purposes, market participants should be able to determine quickly that price movements in the Russell 1000 Index predict movements in a Fund's VIIV 95% of the time (an acceptably high correlation) but that the VIIV generally moves approximately half as much as the Russell 1000 Index with each price movement. This information is sufficient for market participants to construct a reasonable hedge—buy or sell an amount of futures, swaps or ETFs that track the Russell 1000 equal to half the opposite exposure taken with respect to Shares. Market participants will also continuously compare the intraday performance of their hedge to a Fund's VIIV. If the intraday performance of the hedge is correlated with the VIIV to the expected degree, market participants will feel comfortable they are appropriately hedged and can rely on the VIIV as appropriately indicative of a Fund's performance.

[45] The statements in the Statutory Basis section of this filing relating to pricing efficiency, arbitrage, and activities of market participants, including market makers and APs, are based on representation by the Adviser and review by the Exchange.

leverage. While a Fund may invest in inverse ETFs, a Fund will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of additional actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBZX–2018–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2018–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2018–010 and should be submitted on or before March 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–03313 Filed 2–16–18; 8:45 am]

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[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82702; File No. SR–NASDAQ–2018–008]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify the Listing Requirements Contained in Listing Rule 5635(d) To Change the Definition of Market Value for Purposes of the Shareholder Approval Rules and Eliminate the Requirement for Shareholder Approval of Issuances at a Price Less Than Book Value but Greater Than Market Value

February 13, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''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 modify the listing requirements contained in Listing Rule 5635(d) to change the definition of market value for purposes of the shareholder approval rules and eliminate the requirement for shareholder approval of issuances at a price less than book value but greater than market value.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq shareholder approval requirements were adopted in 1990.[3] Among other circumstances, the rule requires shareholder approval for security issuances for less than the greater of book or market value (other than in the context of a public offering) if either (a) the issuance equals 20% of the outstanding stock or voting power or (b) if a smaller issuance coupled with sales by the officers, directors or substantial security holders meets the 20% threshold.[4] This provision has remained substantively unchanged for the last 28 years. On the other hand, the capital markets and securities laws, as well as the nature and type of share issuances, have evolved significantly in that time.

In 2016, Nasdaq requested comments from, and held discussions with, market participants regarding whether, given these changes, Nasdaq could update its shareholder approval rules to enhance the ability for capital formation without sacrificing investor protections. Based on the feedback received, in June 2017, Nasdaq launched a formal comment solicitation on a specific proposal to amend Listing Rule 5635(d) (the ''2017 Solicitation''). Based on Nasdaq's experience and the comments received, Nasdaq proposes to amend Rule 5635(d) to change the definition of market value for purposes of the shareholder approval rules and eliminate the requirement for shareholder approval of issuances at a price less than book value but greater than market value.

I. Definition of Market Value

Listing Rule 5635(d) requires a Nasdaq-listed company to obtain shareholder approval when issuing common stock or securities convertible into common stock, which alone or together with sales by officers, directors or Substantial Shareholders of the Company, equal to 20% or more of the shares or 20% or more of the voting power outstanding at a price less than the greater of the book value or market value of that stock. Listing Rule 5005 defines ''market value'' as the closing bid price.

Market participants often express to Nasdaq their concern that bid price may not be transparent to companies and investors and does not always reflect an actual price at which a security has traded. Generally speaking, the price of an executed trade is viewed as a more reliable indicator of value than a bid quotation; and the more shares executed, the more reliable the price is considered. Further, it was noted by commenters in the 2017 Solicitation that in structuring transactions, investors and companies often rely on an average price over a prescribed period of time for pricing issuances because it can smooth out unusual fluctuations in price.

Accordingly, Nasdaq proposes to modify the measure of market value for purposes of Listing Rule 5635(d) from the closing bid price to the lower of: (i) The closing price (as reflected on *Nasdaq.com*); or (ii) the average closing price of the common stock (as reflected on *Nasdaq.com*) for the five trading days immediately preceding the signing of the binding agreement.

A. Closing Price

The closing price reported on *Nasdaq.com* is the Nasdaq Official Closing Price, which is derived from the closing auction on Nasdaq and reflects actual sale prices at one of the most liquid times of the day. The Nasdaq closing auction is designed to gather the maximum liquidity available for execution at the close of trading, and to maximize the number of shares executed at a single price at the close of the trading day. The closing auction promotes accurate closing prices by offering specialized orders available only during the closing auction and integrating those orders with regular orders submitted during the trading day that are still available at the close. The closing auction is made highly transparent to all investors through the widespread dissemination of stock-by-stock information about the closing auction, including the potential price and size of the closing auction. Nasdaq believes its closing auction has proven to be a valuable pricing tool for issuers, traders, and investors alike; and Nasdaq continually works to enhance the experience for those that rely upon it. For these reasons, Nasdaq believes that the closing price reported on *Nasdaq.com* is a better reflection of the market price of a security than the closing bid price. This proposal is consistent with the approach of other exchanges.[5]

In addition, because prices are displayed from numerous data sources on different websites, to provide transparency within the rule to the appropriate price, and assure that companies and investors use the Nasdaq Official Closing Price when pricing transactions, Nasdaq proposes to codify within the rule that *Nasdaq.com* is the appropriate source of the closing price information.[6]

B. Five-Day Average Price

Several commenters supported the use of a five-day average in their responses to the 2017 Solicitation. For example, one commenter suggested that ''[i]nvestors view a 5 day average as a more fair method of determining 'market value' (in a non-technical sense)'' and continued that ''[u]sing the closing bid on the closing date is more prone to unanticipated and inequitable results based on market fluctuations.''[7] Another commenter stated that they believe that a ''five-day trailing average of the closing price is more representative of actual market value than the closing bid price.''[8]

While investors and companies sometimes prefer to use an average when pricing transactions, Nasdaq notes that there are potential negative consequences to using a five-day average as the sole measure of whether shareholder approval is required. For example, in a declining market, the five-day average price will always be above

[3] Securities Exchange Act Release No. 28232 (July 19, 1990), 55 FR 30346 (July 25, 1990) (adopting [sic] the predecessor to Listing Rule 5635(d)).

[4] *Id.*

[5] *See* Section 312.04(i) of the NYSE Listed Company Manual (''Market value'' of the issuer's common stock means the official closing price on the [NYSE] as reported to the Consolidated Tape immediately preceding the entering into of a binding agreement to issue the securities.).

[6] The closing price is published on *Nasdaq.com* with a 15 minute delay and is available without registration or fee and Nasdaq does not currently intend to charge a fee for access to this data or otherwise restrict availability and, in the event that Nasdaq subsequently determines to do so, it will file a proposed rule change under Section 19(b) of the Act with respect to such change if necessary to address the impact of compliance with this rule.

[7] *See* Letter from Michael Grundei, Wiggin and Dana LLP, dated June 16, 2017 (Grundei Letter).

[8] Letter from Linda Zwobota, CPA, CFO, Lightbridge Corporation, dated June 27, 2017 (Lightbridge Letter).

current market price, thus making it difficult for companies to close transactions because investors could buy shares in the market at a price below the five-day average price. Conversely, in a rising market, the five-day average price will appear to be a discount to the closing price. In addition, if material news is announced during the five-day period, the average could be a worse reflection of the market value than the closing price after the news is disclosed. Nonetheless, Nasdaq believes that these risks are already accepted in the market, as evidenced by the use of an average price in transactions that do not require shareholder approval under Nasdaq's rules, such as where less than 20% of the outstanding shares are issuable in the transaction, notwithstanding the risk of price movement during the period to the new investor, the company and its current shareholders, each of which has potential risk and benefit depending on how the price ultimately changes during that period.

Other commenters in the 2017 Solicitation believed that the five-day average price may be inappropriate as a measure of market value of listed securities in certain circumstances and suggested that it therefore should only be used as an optional alternative to closing price. In that regard, one commenter, while agreeing that a five-day trailing average is a useful alternative measure of market price, pointed out that:

> [T]he Rule 144A convertible bond market and the related call spread overlay market (whether entered into in connection with a Rule 144A or registered convertible bond) currently benefit from certain synergies that arise from the use of the one-day closing price in light of the complex regulatory, tax and accounting analysis of these transactions and the related hedging activities of market participants.[9]

Other commenters raised similar concerns.[10] Nasdaq believes these concerns are justified and as such, Nasdaq proposes to amend Listing Rule 5635(d) to define market value as the lower of the closing price at the time of the transaction or the five-day average of the closing price as the measure of market value for purposes of the shareholder approval rules. This means that the issuance would not require an approval by company's shareholders, so long as it is at a price that is greater than the lower of those measures.[11] To improve the readability of the rule, Nasdaq proposes to define this new concept as the ''Minimum Price'' and eliminate references to book value and market value from Listing Rule 5635(d).

II. Book Value

Nasdaq proposes to eliminate the requirement for shareholder approval of issuances at a price less than book value but greater than market value. Book value is an accounting measure and its calculation is based on the historic cost of assets, not their current value. As such, market participants have indicated, and Nasdaq agrees, that book value is not an appropriate measure of whether a transaction is dilutive or should otherwise require shareholder approval. Nasdaq has also observed that when the market price is below the book value, the rule becomes a trap for the unwary. In that regard, the existing book value test can appear arbitrary and have a disproportionate impact on companies in certain industries and at certain times. For example, during the financial crisis in 2008 and 2009, many banks and finance-related companies temporarily traded below book value. Similarly, companies that make large investments in infrastructure may trade below the accounting carrying value of those assets. In these situations companies are often frustrated when they learn that they cannot quickly raise capital on terms that are favorable to the market price. Based on conversations with investors, Nasdaq also believe that book value is not considered by shareholders to be a material factor when they are asked to vote to approve a proposed transaction. Most commenters in the 2017 Solicitation supported the elimination of the book value requirement from the shareholder approval rules.[12] The only support for retaining the book value limitation, came from one commenter who appeared to believe that issuances below book value would result in negative investor perception of the issuer and that book value was an alternative measure not subject to market manipulation.[13] The commenter did not elaborate or provide any evidence of price manipulation surrounding the pricing of transactions (which would be investigated by Nasdaq Regulation and FINRA) and Nasdaq does not believe this hypothetical and unsubstantiated concern justifies retaining the book value requirement in light of the other concerns raised about its arbitrary and disproportionate impact on certain companies and the lack of importance placed on this requirement by investors.

III. Other Changes

To improve the readability of Listing Rule 5635(d) Nasdaq proposes to define ''20% Issuance'' as ''a transaction, other than a public offering as defined in IM–5635–3, involving the sale, issuance or potential issuance by the Company of common stock (or securities convertible into or exercisable for common stock), which alone or together with sales by officers, directors or Substantial Shareholders of the Company, equals 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance.'' This definition combines the situations described in existing Rule 5635(d)(1) and (d)(2) and makes no substantive change but for the change to the pricing tests, as described above, such that shareholder approval would be required under the same circumstances for a 20% Issuance as under existing Listing Rule 5635(d).

Nasdaq also proposes to amend the title of Listing Rule 5635(d) and the preamble to Listing Rule 5635 to replace references to ''private placements'' to ''transactions other than public offerings'' to conform the language in the title of Listing Rule 5635(d) and the preamble to the language in the rule text and that of IM–5635–3, which provides the definition of a public offering.

Finally, Nasdaq proposes to amend Listing Rules IM–5635–3 and IM–5635–4, which describe how Nasdaq applies the shareholder approval requirements, to conform references to book and market value with the new definition of Minimum Price, as described above, and to utilize the newly defined term 20% Issuance.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the

[9] Letter from Greg Rogers, Latham and Watkins LLP, dated July 27, 2017 (Latham Letter).

[10] Letter from Michael Adelstein, Kelley Drye & Warren LLP, dated July 28, 2017 (Kelley Drey Letter); Letter from Michael Nordtvedt, Wilson Sonsini Goodrich & Rosati, P.C., dated July 31, 2017 (Wilson Sonsini Letter); Joseph A. Smith, Ellenoff Grossman & Schole LLP, dated July 31, 2017 (Ellenoff Grossman Letter).

[11] Issuances below Market Value to officers, directors, employees, or consultants are, and will continue to be, subject to Listing Rule 5635(c). *See* Nasdaq's FAQ #275 at *https://listingcenter.nasdaq.com/Material_Search.aspx?materials=275&mcd=LQ&criteria=2*.

[12] Comments supporting the change could be summarized through words of one commenter who suggested that ''investors don't view book value as the equivalent (or even a reasonable substitute for) market value.'' Grundei Letter.

[13] Letter from Heather Koziara, Chief Risk Officer, Conifer Holdings Inc., dated June 16, 2017 (Conifer Letter).

[14] 15 U.S.C. 78f(b).

objectives of Section 6(b)(5) of the Act,[15] 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. Nasdaq believes that the approach taken in the proposal strikes an appropriate balance between investor protection and impediments upon issuers.

Definition of Market Value

The proposed rule change will modify the minimum price at which a 20% Issuance would not need shareholder approval from the closing bid price to the lower of: (i) The closing price (as reflected on *Nasdaq.com*); or (ii) the average closing price of the common stock (as reflected on *Nasdaq.com*) for the five trading days immediately preceding the signing of the binding agreement.

Nasdaq believes that allowing issuers to price transactions at the closing price (as reflected on *Nasdaq.com*) rather than closing consolidated bid price will perfect the mechanism of a free and open market and protect investors and the public interest because the closing price will represent an actual sale, which generally occurs at the same or greater price than the bid price.[16] Further, the closing price displayed on *Nasdaq.com* is the Nasdaq Official Closing Price, which is derived from the closing auction on Nasdaq and reflects actual sale prices at one of the most liquid times of the trading day.

Allowing share issuances to be priced at the five-day average of the closing price will further align Nasdaq's requirements with how many transactions are structured, such as transactions where Listing Rule 5635(d) is not implicated because the issuance is for less than 20% of the common stock and the parties rely on the five-day average for pricing to smooth out unusual fluctuations in price. In so doing, the proposed rule change will perfect the mechanism of a free and open market. Further, allowing a five-day average price continues to protect investors and the public interest because it will allow companies and investors to price transactions in a manner designed to eliminate aberrant pricing resulting from unusual transactions on the day of a transaction. Maintaining the allowable average at just a five-day period also protects investors by ensuring the period is not too long, such that it would result in the price being distorted by ordinary past market movements and other outdated events. In a market that rises each day of the period, the five-day average will be less than the price at the end of the period, but would still be higher than the price at the start of such period. Further, as some commenters indicated, aside from Nasdaq requirements, when selecting the appropriate price for a transaction company officers and directors also have to consider their state law structural safeguards, including fiduciary responsibilities, intended to protect shareholder interests.[17]

In addition, because prices could be displayed from numerous data sources on different websites, to provide certainty about the appropriate price, Nasdaq proposes to codify within the rule that *Nasdaq.com* is the appropriate source of the closing price information, which is available with only 15 minute delay and without registration or fee. Because the closing bid price is not included in many public data feeds, this requirement will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because it will improve the transparency of the rule and provide additional certainty to all market participants about the appropriate price to be used in determining if shareholder approval is required.

Finally, Nasdaq believes that where two alternative measures of value exist that both reasonably approximate the value of listed securities, defining the Minimum Price as the lower of those values allows issuers the flexibility to use either measure because they can also sell securities at a price greater than the Minimum Price without needing shareholder approval. This flexibility, and the certainty that a transaction can be structured at either value in a manner that will not require shareholder approval, further perfects the mechanism of a free and open market without diminishing the existing investor protections of the Listing Rule 5635(d).

Book Value

Nasdaq also believes that eliminating the requirement for shareholder approval of issuances at a price less than book value but greater than market value does not diminish the existing investor protections of Listing Rule 5635(d). Book value is primarily an accounting measure calculated based on historic cost and is generally perceived as an inappropriate measure of the current value of a stock. Nasdaq has also observed that the existing book value test can appear arbitrary and have a disproportionate impact on companies in certain industries and at certain times. For example, during the financial crisis in 2008 and 2009, many banks and finance-related companies traded below book value. Similarly, companies that make large investments in infrastructure may trade below the accounting carrying value of those assets. Because book value is not an appropriate measure of the current value of a stock, the elimination of the requirement for shareholder approval of issuances at a price less than book value but greater than market value will remove an impediment to, and perfect the mechanism of, a free and open market, which currently unfairly burdens companies in certain industries, without meaningfully diminishing investor protections of Listing Rule 5635(d).

Other Changes

To improve the readability of Listing Rule 5635(d) Nasdaq proposes to define ''20% Issuance'' as ''a transaction, other than a public offering as defined in IM–5635–3, involving the sale, issuance or potential issuance by the Company of common stock (or securities convertible into or exercisable for common stock), which alone or together with sales by officers, directors or Substantial Shareholders of the Company, equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance.'' This definition combines the situations described in existing Rule 5635(d)(1) and (d)(2) but makes no substantive change. Under the proposed rule, but for the separate change to the pricing test, shareholder approval would be required under the same circumstances for a 20% Issuance as under existing Listing Rule 5635(d). Nasdaq believes that the improved readability of the rule will perfect the mechanism of a free and open market by making the rule easier to understand and apply.

Nasdaq also believes that amending the title of Listing Rule 5635(d) and the preamble to Listing Rule 5635 to replace references to ''private placements'' to ''transactions other than public offerings'' to conform the language in the title of Listing Rule 5635(d) and the preamble to the language in the rule text and that of IM–5635–3, which provides the definition of a public offering, will perfect the mechanism of a free and open market by making the rule easier to understand and apply.

[15] 15 U.S.C. 78f(b)(5).

[16] Sales typically take place between the bid and ask prices.

[17] *See* Wilson Sonsini Letter.

Finally, Nasdaq believes that amending Listing Rules IM–5635–3 and IM–5635–4, which describe how Nasdaq applies the shareholder approval requirements, to conform references to book and market value with the new definition of Minimum Price, as described above, and to utilize the newly defined term 20% Issuance will perfect the mechanism of a free and open market by eliminating confusion caused by references to a measure that is no longer applicable and by making the rule easier to understand and apply.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would revise requirements that burden issuers by unnecessarily limiting the circumstances where they can sell securities without shareholder approval All listed companies would be affected in the same manner by these changes. As such, these changes are neither intended to, nor expected to, impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In the 2017 Solicitation, Nasdaq solicited comments on a specific proposal to amend Listing Rule 5635(d) to:

(1) Change the definition of market value for purposes of the shareholder approval rules from closing bid price to a five-day trailing average;

(2) require that any issuance of 20% or more be approved by the independent directors where shareholder approval is not required; and

(3) eliminate the requirement for shareholder approval of issuances at a price less than book value but greater than market value.

In an effort to seek the broadest response, Nasdaq widely distributed the 2017 Solicitation to investors, issuers, legal professionals and other interested parties. In addition, the proposal was posted on the Nasdaq Listing Center™.[18] In total, 12 comments were received. A copy of the 2017 Solicitation is attached to the rule filing as Exhibit 2a. Copies of the comments received are attached to the rule filing as Exhibit 2b.

With regard to the proposal to change the definition of market value for purposes of the shareholder approval rules from closing bid price to a five-day trailing average, of the 12 commenters, seven supported the change,[19] one expressed no opinion,[20] while the remaining four suggested the five-day average price should be used as an alternative to the closing price rather than being an exclusive measure of value of listed securities.[21] Nasdaq determined to adopt this suggestion and now proposes to amend Listing Rule 5635(d) to allow companies the flexibility [sic] of using either the closing price at the time of the transaction or the five-day average of the closing price when pricing 20% Issuances. Transactions could be structured to use either price knowing that neither the lower price nor the higher one would result in the transaction needing shareholder approval under the proposed rule because each will be at or above the new measure of market value for purposes of the shareholder approval rules, which is now defined as Minimum Price.

Two commenters suggested the use of the volume weighted average price (VWAP) instead of the five-day average price because VWAP includes a broader array of trades, such as trades outside the Nasdaq closing auction that forms the closing price, and because VWAP gives greater weight to the price at which a greater number of shares is traded.[22] However, the commenters acknowledged that VWAP methodology generally requires a paid subscription to providers of financial information, such as Bloomberg, to obtain the VWAP.[23] Given the complexity of the VWAP methodology and the potential resulting lack of transparency among retail investors who do not have access to financial data that includes VWAP, at this time, Nasdaq is proposing to change the definition of market value for purposes of the shareholder approval [sic], as described above, by incorporating the concept of the five-day average closing price, rather than VWAP, as the alternative to the closing price at the time of the transaction.

Two commenters suggested that the Nasdaq should amend its rules such that shareholder approval is required for any issuance a [sic] price that is below market price and for any 20% Issuance.[24] Nasdaq is concerned that under their proposal even de minimis issuances below market price and 20% Issuances at substantial premium to market price would require shareholder approval. As such, given the expense and delay associated with obtaining shareholder approval, Nasdaq does not propose amending the rule as these commenters requested at this time.

In the 2017 Solicitation, Nasdaq noted some potential negative consequences to using a five-day average as the measure of whether shareholder approval is required and suggested a potential new safeguard that would have required that any transaction of more than 20% of the company's shares outstanding also be approved by either a committee of independent directors (as defined in Listing Rule 5605(a)(2)) or a majority of the independent directors on the board, unless it is approved by the company's shareholders (the ''Independent Director Approval Requirement'').

The Independent Director Approval Requirement was not embraced by the commenters, many of whom doubted the utility of the Independent Director Approval Requirement.[25] Some commenters saw the Independent Director Approval Requirement as a new burden on listed companies that largely duplicates the existing state corporate law requirements and thus outweighs any offsetting benefits to shareholders.[26] In that regard,

[18] *https://listingcenter.nasdaq.com/assets/Shareholder%20Approval%20Comment%20Solicitation%20June%2014%202017.pdf.*

[19] *See* Letter from Dickerson Wright, Chairman and CEO of NV5, dated June 15, 2017 (NV5 Letter); Grundei Letter; Letter from Kenneth A. Bertsch, Executive Director, Council of Institutional Investors, dated June 26, 2017 (CII Letter); Lightbridge Letter; Letter from Penny Somer-Greif, et al., Chair, the Committee on Securities Law of the Business Law Section of the Maryland State Bar Association, dated July 31, 2017 (Md Bar Letter); Letter from Harvey Kesner, Sichenzia Ross Ference Kesner LLP, dated July 31, 2017 (Sichenzia Letter); Letter from Anne Sheehan, Director of Corporate Governance, California State Teachers' Retirement System, dated August 1, 2017 (CALSTRS letter).

[20] *See* Conifer Letter (addressing only the proposal to eliminate the requirement for shareholder approval of issuances at a price less than book value but greater than market value).

[21] *See* Latham Letter, Kelley Drey Letter, Wilson Sonsini Letter, and Ellenoff Grossman Letter.

[22] *See* Kelley Drye Letter and Ellenoff Grossman Letter.

[23] *Id.*

[24] *See* CALSTERS Letter and CII Letter.

[25] One commenter supported the proposed Independent Director Approval Requirement. *See* Md Bar Letter (''[W]e believe the [Independent Director Approval Requirement] is reasonable, as it adds an additional protection for investors without unduly burdening Nasdaq-listed companies seeking to raise capital.''). Some commenters supported this proposal without discussing the specific burdens and benefit of this proposal. *See* Lightbridge Letter; Latham Letter. Some commenters did not address this issue. *See* Kelley Drye Letter, Sichenzia Letter, and Conifer Letter. The remaining six commenters opposed this proposal. *See* Footnotes 26 and 28 below.

[26] *See* Wilson Sonsini Letter (''Rather than ensuring adequate consideration of shareholder interests, we respectfully submit that the [Independent Director Approval Requirement]

Continued

commenters noted state law protections, such as the fiduciary duties of care and loyalty imposed on management and directors to act in the best interest of the company and its shareholders.[27] Thus, given the cool reception received from investors, who did not believe the addition of this listing requirement would meaningfully add to investor protection,[28] and the belief of commenters that the Independent Director Approval Requirement is ''solving the problem that does not exist,'' [29] Nasdaq is not proposing to adopt the Independent Director Approval Requirement at this time.

With regard to the proposal to eliminate the requirement for shareholder approval of issuances at a price less than book value but greater than market value, of the 12 commenters, only one specifically opposed the proposed rule change.[30] The commenter that opposed the proposed rule change seemed to have been concerned with potentially negative market perception of issuances below book value and with potential stock price manipulations by suggesting that the ''. . . proposed rule change compromises Nasdaq's commitment to protect investors . . . by allowing companies the potential power to materially affect the stock price without prior approval of current stockholders.'' [31] The commenter did not elaborate and did not provide any evidence of price manipulation (which would be investigated by Nasdaq Regulation and FINRA) and Nasdaq does not believe this single hypothetical and unsubstantiated concern justifies retaining the book value requirement in light of the other concerns raised about its arbitrary and disproportionate impact on certain companies and the lack of importance placed on this requirement by investors.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2018–008 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–2018–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2018–008, and should be submitted on or before March 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–03311 Filed 2–16–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82701; File No. SR–MRX–2018–04]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Memorialize Functionality Designed To Assist Members in the Event That They Lose Communication

February 13, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2018, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 a proposal to memorialize functionality which is designed to assist Members in the event that they lose communication with their assigned Specialized Quote Feed (''SQF''),[3] Financial Information

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would be duplicative of, and already more effectively addressed by, the corporate law requirements of an issuer's jurisdiction of incorporation in the vast majority of cases.''). *See also,* Grundei Letter (''. . . there are already state law requirements regarding such approvals.'').

[27] *See* Wilson Sonsini Letter.

[28] *See* CALSTERS Letter (''[W]e genuinely believe and appreciate that a majority of independent directors should always screen and vote on any stock issuances . . .''). Yet, CALSTERS Letter suggested removal the Independent Director Approval Requirement for the proposed rule. *See also,* CII Letter (suggesting removal the Independent Director Approval Requirement for the proposed rule and the imposition of shareholder approval requirements for any issuance a price that is below market price and any 20% Issuances). *See also,* Ellenoff Grossman Letter (''[Independent Director Approval Requirement] may not prove helpful to outside shareholders, in practice''). *See also,* NV5 Letter.

[29] Grundei Letter.

[30] One commenter indicated that he disagreed with the proposed change, but did not address the issue directly. *See* NV5 Letter.

[31] Conifer Letter.

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] SQF is an interface that allows market makers to connect and send quotes, sweeps and auction responses into the Exchange.

eXchange (''FIX''),[4] or Ouch to Trade Options (''OTTO'') [5] Ports due to a loss of connectivity.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to memorialize its detection of loss of connection risk protection, which is applicable to all Members, at MRX Rule 711(e). This automated process is in effect if a Member's SQF, FIX or OTTO Port loses communication with a Client Application due to a loss of connectivity. This feature is designed to protect MRX Market Makers [6] and other market participants from inadvertent exposure to excessive risk.

Members currently enter quotes and/or orders utilizing either an SQF, FIX or OTTO Port. SQF is utilized by MRX Market Makers and FIX and OTTO are utilized by all market participants. These ports are trading system components through which a Member communicates its quotes and/or orders to the Exchange's match engine through the Member's Client Application. The Exchange proposes to define ''Client Application'' as the system component of the Member through which the Member communicates its quotes and orders to the Exchange at proposed Rule 711(e)(i)(E). Under the proposed rule change, an SQF Port would be defined as the Exchange's proprietary system component through which MRX Market Makers communicate their quotes from the Client Application at proposed Rule 711(e)(i)(B). A FIX Port would be defined as the Exchange's universal system component through which Members communicate their orders from the Member's Client Application at proposed Rule 711(e)(i)(D). An OTTO Port would be defined as the Exchange's proprietary system component through which Members communicate their orders from the Member's Client Application at proposed Rule 711(e)(i)(C). MRX Market Makers may submit quotes to the Exchange from one or more SQF Ports. Similarly, market participants may submit orders to the Exchange from one or more FIX or OTTO Ports. The proposed cancellation feature will be mandatory for each MRX Market Maker utilizing SQF for the removal of quotes and optional for any market participant utilizing FIX or OTTO for the removal of orders.

When the SQF Port detects the loss of communication with a Member's Client Application because the Exchange's server does not receive a Heartbeat message [7] for a certain period of time (a period of ''nn'' seconds), the Exchange will automatically logoff the Member's affected Client Application and automatically cancel all of the Member's open quotes. Quotes will be cancelled across all Client Applications that are associated with the same MRX Market Maker ID and underlying issues.

The Exchange proposes to define a ''Heartbeat'' message as a communication which acts as a virtual pulse between the SQF, FIX or OTTO Port and the Client Application at proposed Rule 711(e)(i)(A). The Heartbeat message sent by the Member and subsequently received by the Exchange allows the SQF, FIX or OTTO Port to continually monitor its connection with the Member.

SQF Ports

The Exchange's system has a default time period, which will trigger a disconnect from the Exchange and remove quotes, set to fifteen (15) seconds for SQF Ports. A Member may change the default period of ''nn'' seconds of no technical connectivity to trigger a disconnect from the Exchange and remove quotes to a number between one hundred (100) milliseconds and 99,999 milliseconds for SQF Ports prior to each Session of Connectivity to the Exchange. This feature is enabled for each MRX Market Maker and may not be disabled.

There are two ways to change the number of ''nn'' seconds: (1) Systematically or (2) by contacting the Exchange's operations staff. If the Member changes the default number of ''nn'' seconds, that new setting shall be in effect throughout the current Session of Connectivity and will then default back to fifteen seconds.[8] The Member may change the default setting prior to each Session of Connectivity. A Session of Connectivity would be defined to mean each time the Member connects to the Exchange's system. If the Member were to connect and then disconnect within a trading day several times, each time the Member disconnected the next session would be a new Session of Connectivity. This definition is proposed at proposed Rule 711(e)(i)(F). The Member may also communicate the time to the Exchange by calling the Exchange's operations staff. If the time period is communicated to the Exchange by calling Exchange operations, the number of ''nn'' seconds selected by the Member shall persist for each subsequent Session of Connectivity until the Member either contacts Exchange operations by phone and changes the setting or the Member selects another time period in the Client Application prior to the next Session of Connectivity.

FIX and OTTO Ports

The Exchange's system has a default time period, which will trigger a disconnect from the Exchange and remove orders, set to thirty (30) seconds for FIX Ports and fifteen (15) seconds for OTTO Ports. The Member may disable the removal of orders feature, but not the disconnect feature. If the Member elects to have its orders removed, in addition to the disconnect for FIX, the Member may determine a time period of no technical connectivity to trigger the disconnect and removal of orders between one (1) second and thirty (30) seconds. If the Member elects to have its orders removed, in addition to the disconnect for OTTO, the Member may determine a time period of no technical connectivity to trigger the disconnect and removal of orders between one hundred (100) milliseconds and 99,999

[4] FIX is an interface that allows market participants to connect and send orders and auction orders into the Exchange.

[5] OTTO is an interface that allows market participants to connect and send orders, auction orders and auction responses into the Exchange.

[6] The term ''market makers'' refers to ''Competitive MRX Market Makers'' and ''Primary MRX Market Makers'' collectively.

[7] It is important to note that the Exchange separately sends a connectivity message to the Member as evidence of connectivity.

[8] The Exchange's system would capture the new setting information that was changed by the Member and utilize the amended setting for that particular session. The setting would not persist beyond the current Session of Connectivity and the setting would default back to 15 seconds for the next session if the Member did not change the setting again.

milliseconds. All orders will be automatically cancelled.

There are two ways to change the number of ''nn'' seconds: (1) Systematically or (2) by contacting the Exchange's operations staff. If the Member changes the default number of ''nn'' seconds, that new setting shall be in effect throughout that Session of Connectivity and will then default back to thirty seconds for FIX Ports or fifteen seconds for OTTO Ports at the end of that session. The Member may change the default setting prior to each Session of Connectivity. The Member may also communicate the time to the Exchange by calling the Exchange's operations staff. If the time period is communicated to the Exchange by calling Exchange operations, the number of ''nn'' seconds selected by the Member shall persist for each subsequent Session of Connectivity until the Member either contacts Exchange operations by phone and changes the setting or the Member selects another time period through the Client Application prior to the next Session of Connectivity.

Similar to SQF Ports, when a FIX or OTTO Port detects the loss of communication with a Member's Client Application for a certain time period (a period of ''nn'' seconds), the Exchange will automatically logoff the Member's affected Client Application and if elected, automatically cancel all orders. The Member may have an order which has routed away prior to the cancellation, in the event that the order returns to the Order Book, because it was either not filled or partially filled, that order will be cancelled.

The disconnect feature is mandatory for FIX and OTTO users however the user has the ability to elect to also enable a removal feature, which will cancel all orders submitted through that FIX or OTTO Port. If the removal of orders feature is not enabled, the system will simply disconnect the FIX and/or OTTO user and not cancel any orders. The FIX and/or OTTO user would have to commence a new Session of Connectivity to add, modify or cancel its orders once disconnected.

The trigger for the SQF, FIX and OTTO Ports is Client Application specific. The automatic cancellation of the MRX Market Maker's quotes for SQF Ports and open orders, if elected by the Member for FIX or OTTO Ports, entered into the respective SQF, FIX or OTTO Ports via a particular Client Application will neither impact nor determine the treatment of the quotes of other MRX Market Makers (not associated with the same Market Maker ID) entered into SQF Ports or orders of the same or other Members entered into the FIX or OTTO Ports via a separate and distinct Client Application.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to promote just and equitable principles of trade, 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 imposing this mandatory removal functionality on MRX Market Makers to prevent disruption in the marketplace and also offering this removal feature to other market participants. Requiring MRX Market Makers to utilize the disconnect feature will avoid risks associated with inadvertent executions in the event of a loss of connectivity. Other market participants will have the option to either enable or disable the cancellation feature, thereby offering the same risk protections throughout the market.

MRX Market Makers will be required to utilize this disconnect and removal functionality with respect to SQF Ports. This feature will remove impediments to and improve the mechanism of a free and open market and a national market system aimed at protecting investors and the public interest by requiring MRX Market Makers quotes to be removed in the event of a loss of connectivity with the Exchange's system. MRX Market Makers provide liquidity to the market place and have obligations unlike other market participants.[11] This risk feature is important because it will enable MRX Market Makers to avoid risks associated with inadvertent executions in the event of a loss of connectivity with the Exchange. The proposed rule change is designed to not permit unfair discrimination among market participants, as it would apply uniformly to all MRX Market Makers utilizing SQF Ports.

The disconnect feature of FIX and OTTO is mandatory, however market participants will have the option to either enable or disable the cancellation feature, which would result in the cancellation of all orders submitted over the applicable FIX or OTTO Port when such port disconnect [sic]. It is appropriate to offer this removal feature as optional to all market participants utilizing FIX or OTTO, because unlike MRX Market Makers who are required to provide quotes in all products in which they are registered, market participants utilizing FIX or OTTO do not bear the same magnitude of risk of potential erroneous or unintended executions. In addition, market participants utilizing FIX or OTTO may desire their orders to remain on the order book despite a technical disconnect, so as not to miss any opportunities for execution of such orders while the FIX and/or OTTO port is disconnected.

Utilizing a time period for SQF and OTTO Ports of fifteen (15) seconds and permitting MRX Market Makers and Members to modify the setting to between 100 milliseconds and 99,999 milliseconds is consistent with the Act because the Exchange does not desire to trigger unwarranted logoffs of Members and therefore allows Members the ability to set their time in order to enable the Exchange the authority to disconnect the Member with this feature. Both SQF and OTTO are proprietary system components offered by MRX. The Exchange believes that the proposed settings for SQF and OTTO are appropriate timeframes. Each MRX Market Maker and Member has different levels of sensitivity with respect to this disconnect setting and each MRX Market Maker and Member has their own system safeguards as well. A default setting of fifteen (15) seconds is appropriate to capture the needs of all MRX Market Makers and Members and high enough not to trigger unwarranted removal of quotes and orders.

Further, MRX Market Makers and Members are able to customize their settings. The Exchange's proposal to permit a timeframe for SQF and OTTO Ports between 100 milliseconds and 99,999 milliseconds is consistent with the Act and the protection of investors because the purpose of this feature is to mitigate the risk of potential erroneous or unintended executions associated with a loss in communication with a Client Application. Members are able to better anticipate the appropriate time within which they may require prior to a logoff as compared to the Exchange. The Member is being offered a timeframe by the Exchange within which to select the appropriate time. The Exchange does not desire to trigger unwarranted logoffs of Members and therefore permits Members to provide an alternative time to the Exchange, within the Exchange's prescribed timeframe, which authorizes the Exchange to disconnect the Member. The ''nn'' seconds serve as the Member's instruction to the Exchange to act upon the loss of connection and

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* MRX Rule 804(e).

remove quotes from the system, and if elected, orders from the System. This range will accommodate Members in selecting their appropriate times within the prescribed timeframes.

With respect to SQF, the Exchange's proposal is further consistent with the Act because it will mitigate the risk of potential erroneous or unintended executions associated with a loss in communication with a Client Application which protects investors and the public interest. Also, any interest that is executable against a MRX Market Maker's quotes that is received [12] by the Exchange prior to the trigger of the disconnect to the Client Application, which is processed by the system, automatically executes at the price up to the MRX Market Maker's size. In other words, the system will process the request for cancellation in the order it was received by the system.

With respect to FIX, a universal system component, the Exchange's proposal would set a default timeframe of thirty (30) seconds and permit a FIX user to modify the timeframe for FIX Ports to between 1 second and 30 seconds for the removal of orders. This proposal is consistent with the Act and the protection of investors because this feature, which is optional, will mitigate the risk of potential erroneous or unintended executions associated with a loss in communication with a Client Application. With respect to the longer timeframe for FIX, as compared to SQF and OTTO, the Exchange notes that unlike SQF and OTTO which are proprietary system components, FIX is a universal component. The settings on FIX remain different given FIX is not a proprietary system component. MRX Market Makers require a quicker timeframe (15 seconds as compared to 30 seconds). MRX Market Makers have quoting obligations [13] and are more sensitive to price movements as compared to other market participants. It is consistent with the Act to provide a longer timeframe within which to customize settings for FIX as compared to SQF Ports because MRX Market Makers need to remain vigilant of market conditions and react more quickly to market movements as compared to other Members entering orders into the system. The proposal acknowledges this sensitivity borne by MRX Market Makers and reflects the reaction time of MRX Market Makers as compared to Members entering orders. Of note, the proposed customized timeframe for FIX might be too long for MRX Market Makers given their quoting requirements and sensitivity to price movements. MRX Market Makers would be severely impacted by a loss of connectivity of more than several seconds. The MRX Market Maker would have exposure during the time period in which they are unable to manage their quote and update that quote. The Member is best positioned to determine their setting. With respect to other market participants that enter orders, they have the option of selecting either OTTO or FIX and therefore are able to obtain a shortened timeframe with OTTO if they desire.

The system operates consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS. Specifically, with respect to MRX Market Makers, their obligation to provide continuous two-sided quotes on a daily basis is not diminished by the automatic removal of such quotes triggered by the disconnect. MRX Market Makers are required to provide continuous two-sided quotes on a daily basis.[14] MRX Market Makers will not be relieved of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a MRX Market Maker for failing to meet the continuous quoting obligation each trading day as a result of disconnects.

With respect to FIX and OTTO Ports, the Exchange will offer this optional removal functionality to all market participants. Offering the removal feature on a voluntary basis to all other market participants is consistent with the Act because it permits them an opportunity to utilize this risk feature, if desired, and avoid risks associated with inadvertent executions in the event of a loss of connectivity with the Exchange. The removal feature is designed to mitigate the risk of missed and/or unintended executions associated with a loss in communication with a Client Application. The proposed rule change is designed to not permit unfair discrimination among market participants, as this optional removal feature will be offered uniformly to all Members utilizing FIX and/or OTTO.

The Exchange will disconnect Members from the Exchange and not cancel a Member's orders if the removal feature is disabled. The disconnect feature is mandatory and will cause the Member to be disconnected within the default timeframe or the timeframe otherwise specified by the Member. This feature is consistent with the Act because it enables FIX and OTTO users the ability to disconnect from the Exchange, assess the situation and make a determination concerning their risk exposure. The Exchange notes that in the event that orders need to be removed, the Member may elect to utilize the Kill Switch [15] feature. The Exchange believes that it is consistent with the Act to require other market participants to be disconnected because the participant is otherwise not connected to the Exchange's system and the Member simply needs to reconnect to commence submitting and cancelling orders. The Exchange believes requiring a disconnect when a loss of communication is detected is a rational course of action for the Exchange to alert the Member of the technical connectivity issue.

The proposed rule change will help maintain a fair and orderly market which promotes efficiency and protects investors. This mandatory removal feature for MRX Market Makers and optional removal for all other market participants will mitigate the risk of potential erroneous or unintended executions associated with a loss in communication with a Client Application.

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. Specifically, the Exchange does not believe the proposed rule change will cause an undue burden on intra-market competition because MRX Market Makers, unlike other market participants, have greater risks in the market place. Quoting across many series in an option creates large principal positions that expose MRX Market Makers, who are required to continuously quote in assigned options, to potentially significant market risk. Providing a broader timeframe for the disconnect and removal of orders for FIX as compared to the removal of quotes for SQF Ports and OTTO orders does not create an undue burden on competition because MRX Market Makers have quoting obligations [16] and are more sensitive to price movements as compared to other market participants. MRX Market Makers need to remain vigilant of market conditions and react more quickly to market movements as compared to other Members entering multiple orders into

[12] The time of receipt for an order or quote is the time such message is processed by the Exchange book.

[13] *See* note 11 above.

[14] *See* note 11 above.

[15] *See* MRX Rule 711(d).

[16] *See* note 11 above.

the system. The proposal reflects this sensitivity borne by MRX Market Makers and reflects the reaction time of MRX Market Makers as compared to other Members entering orders. With respect to other market participants that enter orders, they have the option of selecting either OTTO or FIX and therefore are able to obtain a shortened timeframe with OTTO if they desire.

Offering the removal feature to other market participants on an optional basis does not create an undue burden on intra-market competition because unlike MRX Market Makers, other market participants do not bear the same risks of potential erroneous or unintended executions. FIX and OTTO users have the opportunity to disable the cancellation feature and simply disconnect from the Exchange. FIX and OTTO users may also set a timeframe that is appropriate for their business. It is appropriate to offer this optional cancellation functionality to other market participants for open orders, because those orders are subject to risks of missed and/or unintended executions due to a lack of connectivity which the participants needs to weigh. Finally, the Exchange does not believe that such change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. Other options exchanges offer similar functionality.[17]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

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–MRX–2018–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2018–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2018–04, and should be submitted on or before March 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–03310 Filed 2–16–18; 8:45 am]

BILLING CODE 8011–01–P

[17] *See* Phlx Rule 1019(c), NOM Rules at Chapter VI, Section 6(e) and BX Rules at Chapter VI, Section 6(e).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change 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.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, the Securities and Exchange Commission will hold an Open Meeting on Wednesday, February 21, 2018 at 10:00 a.m.

PLACE: The meeting will be held in Auditorium LL–002 at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov*.

MATTERS TO BE CONSIDERED: The subject matters of the Open Meeting will be the Commission's consideration of:

- Whether to approve the issuance of an interpretive release to provide guidance to assist public companies in preparing disclosures about cybersecurity risks and incidents.
- whether to adopt an interim final rule revising the compliance date for certain provisions of rule 22e–4 under the Investment Company Act of 1940 and related reporting and disclosure requirements.
- whether to propose amendments to Form N–PORT and Form N–1A related to disclosures of liquidity risk management for open end management investment companies.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: February 14, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–03467 Filed 2–15–18; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82697; File No. SR–BOX–2018–07]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Short Term Option Series Program

February 13, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on February 8, 2018, BOX Options Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule 100(a)(65) and IM–5050–6 to expand the Short Term Option Series Program (''Program'') to permit the listing and trading of options series with Monday expirations that are listed pursuant to the Program, including options on the SPDR S&P 500 ETF Trust (''SPY''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 100(a)(65) and IM–5050–6 to expand the Short Term Option Series Program (''Program'') to permit the listing and trading of options series with Monday expirations that are listed pursuant to the Program, including options on the SPDR S&P 500 ETF Trust (''SPY''). This is a competitive filing that is based on a proposal recently submitted by Nasdaq PHLX LLC (''Phlx'') and approved by the Commission.[3]

As set forth in Rule 100(a)(65), a Short Term Option Series is a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Wednesday or Friday of the next business week. The Exchange is now proposing to amend Rule 100(a)(65) to permit the listing of options series that expire on Mondays. Specifically, the Exchange is proposing that it may open for trading series of options on any Monday that is a business day and that expires on the Monday of the next business week. The Exchange is also proposing to list Monday expirations series on Fridays that precede the expiration Monday by one business week plus one business day. Since Rule 100(a)(65) already provides for the listing of short term option series on Fridays, the Exchange is not modifying this provision to allow for Friday listing of Monday expiration series. However, the Exchange is amending Rule 100(a)(65) to clarify that, in the case of a series that is listed on a Friday and expires on a Monday, that series must be listed one business week and one business day prior to that expiration (*i.e.,* two Fridays prior to expiration).

As part of this proposal, the Exchange is also amending Rule 100(a)(65) to address the expiration of Monday expiration series when the Monday is not a business day. In that case, the rule will provide that the series shall expire on the first business day immediately following that Monday. This procedure differs from the expiration date of Wednesday expiration series that are scheduled to expire on a holiday. In that case, the Wednesday expiration series shall expire on the first business day immediately prior to that Wednesday, *e.g.,* Tuesday of that week.[4] However, the Exchange believes that it is preferable to require Monday expiration series in this scenario to expire on the Tuesday of that week rather than the previous business day, *e.g.,* the previous Friday, since the Tuesday is closer in time to the scheduled expiration date of the series than the previous Friday, and therefore may be more representative of anticipated market conditions. The Exchange also notes that Cboe Exchange, Inc. (''Cboe'') uses the same procedure for options on the S&P 500 index (''SPX'') with Monday expirations that listed pursuant to its Nonstandard Expirations Pilot Program and that are scheduled to expire on a holiday.[5]

The Exchange also proposes to make corresponding changes to IM–5050–6, which sets forth the requirements for SPY options that are listed pursuant to the Short Term Options Series Program, to permit Monday SPY expirations (''Monday SPY Expirations''). Accordingly, the Exchange proposes to amend IM–5050–6(d) to state that, with respect to Monday SPY Expirations, the Exchange may open for trading on any Friday or Monday that is a business day series of options on the SPY to expire on any Monday of the month that is a business day and is not a Monday in which Quarterly Options Series expire, provided that Monday SPY Expirations that are listed on a Friday must be listed at least one business week and one business day prior to the expiration. BOX may list up to five consecutive Monday SPY Expirations at one time; the Exchange may have no more than a total of five Monday SPY Expirations.[6] The Exchange will also clarify that, as with Wednesday SPY Expirations,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82611 (February 1, 2018), 83 FR 5473 (February 7, 2018) (Order Approving SR–Phlx–2017–103).

[4] *See* BOX Rule 100(a)(65).

[5] *See* CBOE Rule 24.9(e)(1) (''If the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day. If the Exchange is not open for business on a respective Wednesday or Friday, the normally Wednesday or Friday expiring Weekly Expirations will expire on the previous business day.'')

[6] Proposed IM–5050–6(a) states that the Exchange may have no more than a total of five Short Term Option Expiration Dates, however the Exchange notes that this does not include any Monday or Wednesday SPY Expirations as provided in paragraph (c) and proposed paragraph (d) of IM–5050–6.

Monday SPY Expirations will be subject to the provisions of this Rule.

The interval between strike prices for the proposed Monday SPY Expirations will be the same as those for the current Short Term Option Series for Wednesday and Friday SPY Expirations. Specifically, the Monday SPY Expirations will have a $0.50 strike interval minimum. As is the case with other options series listed pursuant to the Program, the Monday SPY Expiration series will be P.M.-settled.

Currently, for each option class eligible for participation in the Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class. The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective short term option rules; the Exchange may list these additional series that are listed by other exchanges.[7] This thirty (30) series restriction shall apply to Monday SPY Expiration series as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list SPY options expiring on Mondays.

Finally, the Exchange is amending IM–5050–6(b)(2), which addresses the listing of Short Term Options Series that expire in the same week as monthly or quarterly options series. Currently, that rule states that no Short Term Option Series may expire in the same week in which monthly option series on the same class expire (with the exception of Wednesday SPY Expirations) or, in the case of Quarterly Options Series, on an expiration that coincides with an expiration of Quarterly Option Series on the same class. As with Wednesday SPY Expirations, the Exchange is proposing to permit Monday SPY Expirations to expire in the same week as monthly options series on the same class. The Exchange believes that it is reasonable to extend this exemption to Monday SPY Expirations because Monday SPY Expirations and standard monthly options will not expire on the same trading day, as standard monthly options expire on Fridays. Additionally, the Exchange believes that not listing Monday SPY Expirations for one week every month because there was a monthly SPY expiration on the Friday of that week would create investor confusion.

Relatedly, BOX is also amending IM–5050–6(b)(2) to clarify that Monday and Wednesday SPY Expirations may expire in the same week as monthly option series in the same class expire, but that no Short Term Option Series may expire on the same day as an expiration of Quarterly Option Series on the same class. This change will make that provision more consistent with the existing language in IM–5050–6 that prohibits Wednesday SPY Expirations from expiring on a Wednesday in which Quarterly Options Series expire.

The Exchange does not believe that any market disruptions will be encountered with the introduction of P.M.-settled Monday expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Monday expiration series, including Monday SPY Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire almost every Wednesday and Friday, which provide market participants a tool to hedge special events and to reduce the premium cost of buying protection. The Exchange notes that it has been listing Wednesday expirations pursuant to Rule 100(a)(65) and IM–5050–6 since 2016.[8] With the exception of Monday expiration series that are scheduled to expire on a holiday, the Exchange does not believe that there are any material differences between Monday expirations and Wednesday or Friday expirations for Short Term Option Series.

The Exchange seeks to introduce Monday expirations to, among other things, expand hedging tools available to market participants and to continue the reduction of the premium cost of buying protection. The Exchange believes that Monday expirations, similar to Wednesday and Friday expirations, will allow market participants to purchase an option based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

While other exchanges do not currently list Monday SPY Expirations, the Exchange notes that other exchanges currently permit Monday expirations for other options. For example, Cboe lists options on the SPX with a Monday expiration as part of its Nonstandard Expirations Pilot Program.[9]

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''),[10] in general, and Section 6(b)(5) of the Act,[11] 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 Exchange believes the Short Term Option Series Program has been successful to date and that Monday expirations, including Monday SPY Expirations, simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. Similarly, the Exchange believes Monday expirations, including Monday SPY Expirations, should create greater trading and hedging opportunities and flexibility, and will provide customers with the ability to tailor their investment objectives more effectively. While other exchanges do not currently list Monday SPY Expirations, the Exchange notes that Cboe currently permits Monday expirations for other options with a weekly expiration, such as options on the SPX.

With the exception of Monday expiration series that are scheduled to expire on a holiday, the Exchange does not believe that there are any material differences between Monday expirations, including Monday SPY expirations, and Wednesday or Friday expirations, including Wednesday and Friday SPY Expirations, for Short Term Option Series. The Exchange notes that it has been listing Wednesday expirations pursuant to Rule 100(a)(65) and IM–5050–6 since 2016. The Exchange believes that it is consistent with the Act to treat Monday expiration series that expire on a holiday differently than Wednesday or Friday expiration series, since the proposed treatment for Monday expiration series will result in an expiration date that is closer in time to the scheduled expiration date of the series, and therefore may be more representative of anticipated market conditions. The Exchange also notes that Cboe uses the same procedure for SPX options with

[7] *See* IM–5050–6(b).

[8] *See* Securities Exchange Act Release No. 78668 (August 24, 2016), 81 FR 59696 (August 30, 2016) (SR–BOX–2016–28).

[9] *See* CBOE Rule 24.9(e)(1) (''The Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the month or days that coincide with an EOM expiration.'').

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

Monday expirations that are listed pursuant to its Nonstandard Expiration Pilot Program and that are scheduled to expire on a holiday.

Given the similarities between Monday SPY Expiration series and Wednesday and Friday SPY Expiration series, the Exchange believes that applying the provisions in IM–5050–6 that currently apply to Wednesday SPY Expirations to Monday SPY Expirations is justified. For example, the Exchange believes that allowing Monday SPY Expirations and monthly SPY expirations in the same week will benefit investors and minimize investor confusion by providing Monday SPY Expirations in a continuous and uniform manner. The Exchange also believes that is appropriate to amend IM–5050–6(b)(2) to clarify that no Short Term Option Series may expire on the same day as an expiration of Quarterly Option Series on the same class. This change will make that provision more consistent with the existing language in IM–5050–6 that prohibits Wednesday SPY Expirations from expiring on a Wednesday in which Quarterly Options Series expire.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in Monday expirations, including Monday SPY Expirations, in the same way that it monitors trading in the current Short Term Option Series. The Exchange also represents that it has the necessary systems capacity to support the new options series.

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 rule change is being proposed as a competitive response to a filing submitted by Phlx that was recently approved by the Commission.[12] The Exchange notes that having Monday expirations is not a novel proposal, as Cboe currently lists and trades short-term SPX options with a Monday expiration. The Exchange does not believe the proposal will impose any burden on intra-market competition, as all market participants will be treated in the same manner under this proposal. Additionally, the Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents the other options exchanges from proposing similar rules to list and trade short-term options series with Monday expirations.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b–4(f)(6)(iii)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that it recently approved Phlx's substantially similar proposal to list and trade Monday SPY Expirations.[16] The Exchange has stated that waiver of the operative delay will allow the Exchange to list and trade Monday SPY Expirations as soon as possible, and therefore, promote competition among the option exchanges. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, and will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal effective upon filing.[17] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2018–07 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–2018–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for

[12] *See supra* note 3.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intention 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.

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See supra* note 3.

[17] 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).

inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2018–07 and should be submitted on or before March 9, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–03306 Filed 2–16–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82706; File No. SR–NYSE–2018–08]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List for Equity Transactions in Stocks With a Per Share Stock Price of $1.00 or More To Introduce a New Market at-the-Close and Limit at-the-Close Tier 3

February 13, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 1, 2018, 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 amend its Price List for equity transactions in stocks with a per share stock price of $1.00 or more to introduce a new market at-the-close (''MOC'') and limit at-the-close (''LOC'') Tier 3. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to introduce a new MOC/LOC Tier 3.

The proposed change would only apply to fees and credits in transactions in securities priced $1.00 or more.

The Exchange proposes to implement this change to its Price List effective February 1, 2018.

Currently, for MOC/LOC Tier 1, the Exchange currently charges $0.0004 per share for MOC orders and $0.0007 per share for LOC orders from any member organization in the prior three billing months executing (1) an ADV of MOC activity on the NYSE of at least 0.45% of NYSE CADV, (2) an ADV of total close activity (MOC/LOC and executions at the close) on the NYSE of at least 0.7% of NYSE CADV, and (3) whose MOC activity comprised at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close). For MOC/LOC Tier 2, the Exchange currently charges $0.0005 per share for MOC orders and $0.0008 per share for LOC orders from any member organization in the prior three billing months executing (1) an ADV of MOC activity on the NYSE of at least 0.35% of NYSE CADV, (2) an ADV of total close activity (MOC/LOC and other executions at the close) on the NYSE of at least 0.525% of NYSE CADV, and (3) whose MOC activity comprised at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close).

The Exchange proposes a third tier for MOC and LOC orders that would charge $0.0008 per share for MOC orders and $0.0009 per share for LOC orders from any member organization executing in the current billing month (1) an ADV of MOC activity on the NYSE of at least 0.25% of NYSE (Tape A) CADV, (2) an ADV of the member organization's total close activity (MOC/LOC and other executions at the close) on the NYSE of at least 0.35% of NYSE (Tape A) CADV, and (3) whose MOC activity comprised at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close). The rates and requirements for MOC/LOC Tiers 1 and 2 would remain the same.

* * * * *

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations 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,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] 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.

The Exchange believes that the proposed fee change for certain executions at the close are reasonable. The Exchange's closing auction is a recognized industry benchmark,[6] and member organizations receive a substantial benefit from the Exchange in obtaining high levels of executions at the Exchange's closing price on a daily basis.

The Exchange believes that offering a new fee tier for member organizations that execute in a current month an ADV of MOC activity on the NYSE of at least 0.25% of NYSE (Tape A) CADV, an ADV of the member organization's total close activity (MOC/LOC and other executions at the close) on the NYSE of at least 0.35% of NYSE (Tape A) CADV, and whose MOC activity comprised at least 35% of the member organization's total close activity (MOC/LOC and other executions at the close) is reasonable and not unfairly discriminatory because the proposed change would encourage greater marketable and other liquidity at

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[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.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) & (5).

[6] For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

the closing auction, and higher volumes of MOC and LOC orders contribute to the quality of the Exchange's closing auction and provide market participants whose orders are swept into the close with a greater opportunity for execution. The Exchange believes that the proposed tier is equitable and not unfairly discriminatory because all member organizations will be subject to the same fee structure, which will automatically adjust based on prevailing market conditions.

The Exchange believes that charging a lower rate for MOC executions than LOC executions is reasonable and not unfairly discriminatory because MOC orders are always marketable and therefore have a higher likelihood of execution at the close. Charging a lower fee will encourage higher volumes of MOC orders at the close, which should result in a higher level of orders matched and greater liquidity for all Exchange auction participants. The Exchange notes that the current MOC/LOC Tier 1 and MOC/LOC Tier 2 charge a lower rate for MOC executions than LOC executions.

The Exchange believes that the requirement that at least 35% of the member organization's total close activity be comprised of MOC activity in order to qualify for MOC/LOC Tier 3 rates is reasonable and not unfairly discriminatory because MOC orders contribute meaningfully to the price and size discovery, which is the hallmark of the closing auction process. Charging a lower fee to member organizations utilizing MOC orders as a significant component of their closing auction participation will encourage higher volumes of MOC orders at the close, which should result in robust price discovery, a higher level of orders matched and greater liquidity for all Exchange auction participants.

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 the foregoing 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,[7] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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 or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed change will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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)[10] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2018–08 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–2018–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit

[7] 15 U.S.C. 78f(b)(8).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 15 U.S.C. 78s(b)(2)(B).

personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2018–08 and should be submitted on or before March 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–03314 Filed 2–16–18; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15429 and #15430; New Hampshire Disaster Number NH–00040]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of New Hampshire

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for public assistance only for the state of New Hampshire (FEMA–4355–DR), dated 01/02/2018.

Incident: Severe Storm and Flooding.

Incident Period: 10/29/2017 through 11/01/2017.

DATES: Issued on 02/08/2018.

Physical Loan Application Deadline Date: 03/05/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 10/02/2018.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New Hampshire, dated 01/02/2018, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Merrimack

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–03338 Filed 2–16–18; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixth Drone Advisory Committee (DAC) Meeting

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

ACTION: Sixth DAC Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Sixth DAC Meeting.

DATES: The meeting will be held on March 9, 2018, 9:00 a.m.–3:30 p.m. Eastern.

ADDRESSES: The meeting will be held at the MITRE–1 Building, 7525 Colshire Drive, McLean, VA 22102–7539.

FOR FURTHER INFORMATION CONTACT: Al Secen at *asecen@rtca.org* or 202–330–0647, or The RTCA Secretariat, 1150 18th Street NW, Suite 910, Washington, DC 20036, or by telephone at 202–833–9339, fax at 202–833–9434, or website at *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given of the Sixth DAC Meeting. The DAC is a component of RTCA, which is a Federal Advisory Committee. The agenda will likely include, but may not be limited to, the following:

Friday, March 9, 2018

- Call to Order; Official Statement of the Designated Federal Officer
- Welcome and Introductions; Review of the Fifth DAC Meeting
- Approval of Minutes from the Fifth DAC Meeting
- Chairman's Report
- FAA Update
- DAC Subcommittee (SC) Co-Chairs' Report
- DACSC Task Group 3's (TG3) UAS Funding Report
- Discussion of TG3's Report
- Discussion of FAA's Response to DAC Recommendations
- Discussion of DAC Engagement in the Future
- New Business/Agenda Topics
- Closing Remarks
- Adjourn

Attendance is open to the interested public. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION, CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 14, 2018.

Christopher W. Harm,

Unmanned Aircraft Systems (UAS) Stakeholder and Committee Liaison, AUS–10, UAS Integration Office, FAA.

[FR Doc. 2018–03373 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Approval of Noise Compatibility Program for Hawthorne Municipal Airport, Hawthorne, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Hawthorne, California. On April 11, 2014, the FAA determined that the noise exposure maps submitted by the City of Hawthorne were in compliance with applicable requirements. On December 18, 2017, the FAA approved the Hawthorne Municipal Airport Noise Compatibility Program. All 11 of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

DATES: The applicability date of the FAA's approval of the Hawthorne Municipal Airport noise compatibility program is December 18, 2017.

FOR FURTHER INFORMATION CONTACT: Victor Globa, Environmental Protection Specialist, Federal Aviation Administration, Los Angeles Airports District Office, 15000 Aviation Boulevard, Lawndale, California 90261. Telephone: 310–725–3637. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Hawthorne Municipal Airport, applicable December 18, 2017.

Under section 47504 of 49, United States Code (U.S.C.) (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with 14 Code of Federal Regulations (CFR) part 150 (hereinafter referred to as ''part 150'') is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required. Prior to an FAA decision on a request to implement the action, an environmental review of the proposed action may be required. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Los Angeles Airports District Office in the Western-Pacific Region.

The City of Hawthorne submitted their noise compatibility program to the FAA on June 20, 2017, including the noise exposure maps, descriptions and other documentation produced during the noise compatibility planning study conducted from September 7, 2011 through June 20, 2017. The Hawthorne Municipal Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 11, 2014. Notice of this determination was published in the **Federal Register** (79 FR 24489) on April 30, 2014.

The noise exposure maps are based on operational data that is now over five years old. FAA received certification, in accordance with 14 CFR 150.21, that the noise exposure maps are representative of conditions at the airport for the existing and forecast timeframe as of the date of March 2014. Due to the aircraft operational and fleet mix changes since 2014, at the airport, FAA recommends the City of Hawthorne review, revise, and update, as appropriate the future noise exposure maps under 14 CFR 150.21 at the earliest opportunity.

The Hawthorne Municipal Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions through the year 2017. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 47504 of the Act. The FAA began its review of the program on June 23, 2017, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 11 proposed actions for noise abatement, noise mitigation, land use planning and program management measures on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and part 150 have been satisfied. The overall program was approved by the FAA on December 18, 2017.

Outright approval was granted for all 11 specific program measures. The approved measures include: Continue to implement Hawthorne Municipal Airport Fly Quietly pilot and public education program; Continue to use the existing ground run-up area on the south side of the airport; Support the land use compatibility guidelines for project review found in the City of Hawthorne and Inglewood Noise Elements of the General Plan; The City of Hawthorne should amend its Noise Element to include monitoring and updating the part 150 Noise Compatibility Study; Incorporate the Hawthorne Municipal Airport 65 Community Noise Equivalent Level (CNEL) noise contour into the City of Hawthorne General Plan Map; The City of Hawthorne should adopt formal project review guidelines addressing noise compatibility issues; The City of Hawthorne should establish an Airport Overlay Zone; Establish a voluntary residential property acquisition and redevelopment program to remove noise-sensitive land uses within the 2017 65 CNEL noise contour; Continue Use of Airport's Noise Complaint Handling System; Update Noise Exposure Maps and Noise Compatibility Program; and Monitor Implementation of updated part 150 Noise Compatibility Program.

These determinations are set forth in detail in a Record of Approval signed by the Director, Office of Airports, Western-Pacific Region on December 18, 2017. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the City of Hawthorne.

The Record of Approval also will be available on-line at: *http://www.faa.gov/airports/environmental/airport_noise/part_150/states/*.

Issued in Hawthorne, California, on February 9, 2018.

Mark A. McClardy,

Director, Office of Airports, Western-Pacific Region.

[FR Doc. 2018–03425 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Stevens Point Municipal Airport Stevens Point, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change 47.634 acres known as Parcels 55 and 57 of airport land from aeronautical use to non-aeronautical use and to authorize the sale of airport property located at Stevens Point Municipal Airport, Stevens Point, WI. The aforementioned land is not needed for aeronautical use.

The 47.634 acres of airport property stretches along the entire North East quadrant of the airport property. Starting at the far north edge where the property meets State Highway 66, around to the northeast corner of the Runway 30 Runway Protection Zone. This property does not currently serve an aeronautical purpose. Portions of this property are currently not being used for any purpose and portions along the East edge are being used as an access road for the Izaak Walton League and as part of the Green Circle Trail system. If the airport receives permission from the FAA to release the property from aeronautical obligations, it intends on transferring this property to the community for continued use. The continued use of the land as access and trail will only occur once the relocation of the access and recreational trail has happened.

DATES: Comments must be received on or before March 22, 2018.

ADDRESSES: Documents are available for review by appointment at the FAA Chicago Airports District Office, Robert Lee, Program Manager, 2300 E Devon Avenue, Des Plaines, Illinois 60018, Telephone: (847) 294–7526/Fax: (847) 294–7046.

Written comments on the Sponsor's request must be delivered or mailed to: Robert Lee, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 E Devon Avenue, Des Plaines, IL 60018, Telephone Number: (847) 294–7526/ FAX Number: (847) 294–7046.

FOR FURTHER INFORMATION CONTACT: Robert Lee, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 E Devon Avenue, Des Plaines, IL 60018, Telephone Number: (847) 294–7526/ FAX Number: (847) 294–7046.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

Parcel 55 was acquired by the City of Stevens Point in 1941 and dedicated to the airport in 1947 as ''original airport property''. Parcel 57 was acquired in numerous transactions by the City of Stevens Point, both as part of the original airport property and under federal aviation funding programs. The following list shows the individual parcel acquisitions that comprise Parcel 57, year of acquisition and federal funding program:

Parcel 4—1942 & 1957; (road) original airport property
Parcel 9—1941; original airport property
Parcel 10—1941; original airport property
Parcel 7*—1960; FAAP 9–47–020–0604
Parcel 33—1974; ADAP 7–55–0080–01
Parcel 34—1973; ADAP 7–55–0080–01
Parcel 52—1981; ADAP 7–55–0080–01/ AIP 3–55–0080–01
Parcel 53—1981; ADAP 7–55–0080–01/ AIP 3–55–0080–01

* Avigation easement terminated by merger with fee purchase of Parcel 34.

The sponsors proposed non-aeronautical use for this land is the continued use as access to the Izaak Walton League and part of the Green Circle Trail system. The Sponsor proposes a land exchange with City of Stevens Point and will in return gain 49.140 acres (parcels 54 and 56) of land suitable for approach protection.

The property appraisals were developed and reviewed in accordance with FAA order 5100.37B. The appraisal reports are located at the Chicago Airports District Office.

Appraisal reviews are also found at the Chicago Airport District Office. The net gain to the airport is 1.506 acres of land and an increase in airport property value of $46,500. The appraised fair market value (FMV) of each parcel is listed below:

Land to be disposed:

Parcel 55—Acreage = 20.772 Appraised FMV is $54,000.00
Parcel 57—Acreage = 26.862 Appraised FMV is $53,800.00

Land to be acquired:

Parcel 54—Acreage = 46.700 Appraised FMV is $149,400.00
Parcel 56—Acreage = 2.440 Appraised FMV is $4,900.00

The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Stevens Point Municipal Airport, Stevens Point, WI from federal land covenants, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Parcel 55

A parcel of land being a part of the Northwest Quarter of the Northeast Quarter, the Northeast Quarter of the Northwest Quarter, the Northwest Quarter of the Northwest Quarter and the Southwest Quarter of the Northeast Quarter of Section 26, T24N, R8E, City of Stevens Point, Portage County, Wisconsin more fully described as follows:

Commencing at the North Quarter Corner of Section 26; Thence N89°47′20″ E along the North line of the Northeast Quarter of Section 26 a distance of 185.29 feet to the point of beginning. Thence S10°56′42″ E a distance of 214.40 feet; Thence S29°40′58″ W a distance of 700.00 feet; Thence S68°35′57″ W a distance of 1399.29 feet to its intersection with the South line of the Northwest Quarter of the Northwest Quarter of Section 26; Thence N89°50′32″ E along said South line and the South line of the Northeast Quarter of the Northwest Quarter of Section 26 a distance of 1386.66 feet to a Westerly meander line of the Plover River; Thence N65°35′27″ E along said meander line a distance of 194.50 feet; Thence S78°43′24″ E along said meander line a distance of 191.79 feet; Thence N49°30′10″ E along said meander line a distance of 132.66 feet; Thence N37°47′20″ W along said meander line a distance of 184.32 feet; Thence N09°18′13″ W along said meander line a distance of 143.29 feet; Thence N04°05′03″ E along said meander line a distance of 199.86 feet; Thence N57°31′48″ E along said meander line a distance of 124.20 feet; Thence S81°41′34″ E along said meander line a distance of 76.79 feet; Thence S19°51′36″ E along said meander line a distance of 258.46 feet; Thence N00°29′04″ W a distance of 898.93 feet to its intersection with the North line of the Northeast Quarter of Section 26; Thence S89°47′20″ W along

said North line a distance of 383.10 feet to the point of beginning.

Parcel 57

A parcel of land being a part of the Southwest Quarter of the Southeast Quarter, the Southeast Quarter of the Southwest Quarter of Section 14, the Northwest Quarter of the Northeast Quarter, the Northeast Quarter of the Northwest Quarter, the Southwest Quarter of the Northwest Quarter, the Southeast Quarter of the Northwest Quarter, the Northwest Quarter of the Southwest Quarter, the Northeast Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter and the Southeast Quarter of the Southwest Quarter of Section 23, T24N, R8E, City of Stevens Point, Portage County, Wisconsin more fully described as follows:

Commencing at the West Quarter Corner of Section 14; Thence S89°48′07″ E along the North line of the Southwest Quarter of Section 14 a distance of 2630.42 feet to a 2″ Iron Pipe also being the Center of Section 14; Thence S00°24′38″ E along the East line of the Southwest Quarter of Section 14 a distance of 1314.25 feet to the Northwest Corner of the Southwest Quarter of the Southeast Quarter of Section 14 also being the point of beginning. Thence S89°50′51″ E along the North line of the Southwest Quarter of the Southeast Quarter of Section 14 a distance of 742.80 feet; Thence S00°21′56″ E a distance of 1312.22 feet to its intersection with the South line of the Southwest Quarter of the Southeast Quarter of Section 14; Thence S89°59′49″ W along said South line a distance of 622.73 feet; Thence S29°39′41″ W a distance of 2807.79 feet to the West line of the Southeast Quarter of the Northwest Quarter of Section 23; Thence S00°27′59″ E along said West line a distance of 211.40 feet to the Northwest Corner of the Northeast Quarter of the Southwest Quarter of Section 23; Thence S00°24′01″ E along the West line of the Northeast Quarter of the Southwest Quarter of Section 23 a distance of 1328.47 feet to the Southwest Corner of the Northeast Quarter of the Southwest Quarter of Section 23; Thence N89°53′32″ E along the South line of the Northeast Quarter of the Southwest Quarter of Section 23 a distance of 1309.80 feet to the Northeast Corner of the Southeast Quarter of the Southwest Quarter of Section 23; Thence S00°43′30″ E along the East line of the Southeast Quarter of the Southwest Quarter of Section 23 a distance of 350.02 feet; Thence S89°53′32″ W a distance of 877.14 feet; Thence N57°30′33″ W a distance of 618.84 feet; Thence N00°24′01″ W a distance of 1344.59 feet; Thence N00°27′59″ W a distance of 196.38 feet;

Thence N29°39′41″ E a distance of 2452.09 feet; Thence N38°12′00″ E a distance of 1292.15 feet; Thence N22°27′46″ W a distance of 602.03 feet; Thence N89°50′51″ W a distance of 436.79 feet; Thence N89°48′28″ W a distance of 675.78 feet;

Thence S40°22′20″ W a distance of 152.91 feet; Thence N49°37′40″ W a distance of 99.84 feet to its intersection with the Southeasterly Right-of-Way of STH 66; Thence N40°23′54″ E along said Southeasterly line a distance of 155.05 feet to its intersection with the North line of the Southeast Quarter of the Southwest Quarter of Section 14;

Thence S89°48′28″ E along said North line a distance of 750.60 feet to the point of beginning.

Issued in Des Plaines, IL, on January 25, 2018.

Deb Bartell,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2018–03423 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation: Millennium Engineering and Integration Company Safety Approval Performance Criteria

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This is notification of criteria used to evaluate the Millennium Engineering and Integration Company (MEI) safety approval application. This Notice publishes the criteria that the FAA used to evaluate the safety approval application pursuant to FAA regulations.

Background: MEI applied for, and received, a safety approval for its ability to provide its Flight Analyst Workstation (FAWS) as a component of the process to build flight rules, generate the Mission Data Load (MDL), and verify the MDL prior to loading it onto a launch vehicle's autonomous flight safety unit (AFSU).

The FAA issued MEI the safety approval, subject to the provisions of Title 51 U.S.C. Subtitle V, ch. 509, and the orders, rules and regulations issued under it. This Notice is published pursuant to Title 14 Code of Federal Regulations (14 CFR 414.35).

MEI may offer FAWS as a component of the process of generating and verifying MDLs for AFSUs to a prospective launch or reentry operator to meet the applicable requirements of 14 CFR 417.123(b), (d), and (e), and § 417.309(h).

Criteria Used To Evaluate Safety Approval Application: The performance criteria used to evaluate the FAWS as a component of the process of generating and verifying MDLs for AFSUs included the following FAA regulations, NASA standard, U.S. Air Force manuals or instructions, industry standard, and MEI-developed standards:

14 CFR 417.309(h) Flight Safety System Analysis—Software and Firmware and 14 CFR 417.123 Computing Systems and Software.

NASA–STD–8719.13C Software Safety Standard.

AFSPCMAN 91–710 (v1) Range Safety Policies and Procedures, AFSPCMAN 91–710 (v2) Range Safety User Requirements Manual, Volume 2—Flight Safety Requirements, AFSPCMAN 91–712 Launch Safety Software and Computing System Requirements, and 45 SWI 91–701 45th Space Wing Launch Safety Software Management.

CMMI–Dev (ML3) Capability Maturity Model Integration.

MEI–000071 Configuration Management, MEI–000120 Requirements Development and Management, MEI–000124 Technical Solution, MEI–000149 Agile Software Development Process, and MEI–000125 Verification and Validation.

FOR FURTHER INFORMATION CONTACT: For questions about the performance criteria, you may contact Randal Maday, Licensing and Evaluation Division (AST–200), FAA Office of Commercial Space Transportation (AST), 800 Independence Avenue SW, Room 331, Washington, DC 20591, telephone (202) 267–8652; Email *randal.maday@faa.gov*.

Issued in Washington, DC, on 9 February 2018.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2018–03399 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0374]

Commercial Driver's License Standards; Commercial Vehicle Training Association's Exemption Application for States To Facilitate the Issuance of Licensing Documents to Citizens of Puerto Rico

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of exemption application; request for public comment.

SUMMARY: FMCSA announces that it has received an application from the Commercial Vehicle Training Association (CVTA) on behalf of the States for an exemption from concerning proof of U.S. citizenship or lawful permanent residence, and concerning proof that the State to which the application is made is the applicant's State of domicile, to enable State driver licensing agencies (SDLAs) to accept commercial learner's permit (CLP) and commercial driver's license (CDL) applications from individuals relocating from Puerto Rico. The CVTA explained that it is seeking the exemption to assist citizens of Puerto Rico relocating from the U.S. territory to any of the States in the aftermath of Hurricane Irma. Through this exemption the SDLA would be allowed to follow the Department of Homeland Security's exception process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity. A CLP document issued under this exemption must be limited to 90 days' validity and is subject to the applicant being actively enrolled in a CDL training school within that State. A CDL document issued under this exemption must be limited to six months' validity, at which time the individual would be required to provide proof that the State that issued the CDL is his/her State of domicile. All other requirements must be satisfied upon initial issuance of the CLP or CDL. Elsewhere in today's issue of the **Federal Register**, the Agency has granted a limited 90-day waiver to provide the States with this flexibility in the short-term while the exemption is under consideration.

DATES: Comments must be submitted no later than March 22, 2018.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2017–0374 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *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, 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 number 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 visit 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., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

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: Ms. Nikki McDavid, Chief of the Commercial Driver's License Division, Office of Safety Programs, 202–366–0831, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

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 (FMCSA–2017–0374), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2017–0374'' 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 grant or not grant this application based on your comments.

Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The

exemption may be renewed (49 CFR 381.300(b)).

The Administrator of FMCSA has been delegated authority under 49 CFR 1.73(g) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

Background

Currently, FMCSA requires individuals seeking a CDL to provide to the State proof of citizenship or lawful permanent residency. The FMCSRs include a list of acceptable documents States may accept as proof of citizenship or lawful permanent residency (see Table 1 to 49 CFR 383.71). FMCSA also requires each person to provide proof that the State to which the CDL application is submitted is his/her State of domicile.

CVTA's Request

The CVTA requested relief from FMCSA's CDL requirements concerning proof of U.S. citizenship and domicile in the State that issues the commercial learner's permit (CLP) or commercial driver's license (CDL) to enable citizens of Puerto Rico who seek training at commercial driving schools in any of the 50 States or the District of Columbia. In the aftermath of Hurricane Irma, a number of residents of Puerto Rico have or will soon relocate from the U.S. Territory to one of the States. Some of these residents of Puerto Rico may wish to pursue a career as a commercial motor vehicle driver upon arrival in any of the States.

The CVTA requests that FMCSA provide an exemption allowing the SDLAs the same flexibility that the DHS provides in its Real ID rules (see 6 CFR 37.11(h)), when, for reasons beyond their control, an applicant for a Real ID is unable to present necessary documents and must rely on alternate methods to establish identity. The CVTA also requests that FMCSA provide an exemption allowing CLP candidates to provide a temporary address for the purposes of obtaining the CLP and CDL. The organization suggests that States limit the duration of the CDL document to 6 months before it must be renewed and require a long-term or permanent address, at that time. CVTA argues that the limitations of the exemption would achieve the requisite level of safety by preventing individuals from maintaining a CDL with no known permanent address. A copy of the CVTA's request is included in the docket identified at the beginning of this notice.

Issued on: February 9, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–03363 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Commercial Driver's License Standards; Waiver for States To Facilitate the Issuance of Licensing Documents to Former Residents of Puerto Rico

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; grant of waiver.

SUMMARY: FMCSA grants a limited 90-day waiver from certain requirements concerning proof of U.S. citizenship or legal permanent residence and domicile to enable State driver licensing agencies (SDLAs) to accept commercial learner's permit (CLP) and commercial driver's license (CDL) applications from individuals relocating from Puerto Rico as a result of hurricanes Irma and Maria. This action is being taken in response to a request from the Commercial Vehicle Training Association (CVTA) to assist residents of Puerto Rico relocating from the U.S. territory to any of the States in the aftermath of hurricanes Irma and Maria. Through this waiver, the SDLAs may follow the Department of Homeland Security's exception process for persons who, for reasons beyond their control, are unable to present proof of legal permanent residency or U.S. citizenship. Further, this waiver provides a procedure under which persons who intend to domicile in the State of application may receive additional time to provide proof establishing that the State of application is the State of domicile. A CLP document issued under this waiver may not be valid for more than 90 days and must require the applicant to be actively enrolled in a CDL training school within that State. A CDL document issued under this waiver may not be valid for more than six months, by which time the individual is required to provide proof as required under existing regulations that the State that issued the CDL is his/her State of domicile. All other CLP and CDL licensing requirements must be satisfied upon initial issuance of the CLP or CDL. The Agency has determined that the waiver is within the public interest and would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation, based on the terms and conditions imposed.

DATES: This waiver is applicable February 20, 2018 and expires on May 21, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Nikki McDavid, Chief of the Commercial Driver's License Division, Office of Safety Programs, 202–366–0831, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) provides the Secretary of Transportation (the Secretary) the authority to grant waivers from any of the Federal Motor Carrier Safety Regulations (FMCSRs) issued under Chapter 313 of Title 49 of the United States Code or 49 U.S.C. 31136, to a person(s) seeking regulatory relief. 49 U.S.C. 31315(a). The Secretary must make a determination that the waiver is in the public interest, and that it is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver. Individual waivers may only be granted for a specific unique, non-emergency event, for a period up to three months. TEA–21 authorizes the Secretary to grant waivers without requesting public comment, and without providing public notice.

The Administrator of FMCSA has been delegated authority under 49 CFR 1.73(g) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

Background

The FMCSA received an application for both a waiver and an exemption from the CVTA. The CVTA requested relief from FMCSA's CDL requirements concerning proof of U.S. citizenship and domicile in the State that issues the CLP or CDL to enable citizens of Puerto Rico to seek training at commercial driving schools in any of the 50 States or the District of Columbia. Elsewhere in today's issue of the **Federal Register** FMCSA seeks public comment on CVTA's exemption application.

Currently, FMCSA requires individuals seeking a CLP or CDL to provide the State of application proof of citizenship or legal permanent residency. The FMCSRs include a list of

acceptable documents States may accept as proof of citizenship or legal permanent residency (see Table 1 to 49 CFR 383.71). FMCSA also requires each person to provide proof that the State to which the CLP or CDL application is submitted is his/her State of domicile. The State must require compliance with the standards for establishing proof of citizenship or legal permanent residency, and domicile.

In the aftermath of hurricanes Irma and Maria, a number of residents of Puerto Rico have or will soon relocate from the U.S. Territory to one of the States. Some of these residents may wish to pursue a career as a commercial motor vehicle driver upon arrival in any of the States. However, because of the hurricanes, these individuals may not possess certain documents otherwise necessary to establish U.S. citizenship or legal permanent residency under the CLP and CDL regulations. Similarly, the former residents impacted by the hurricanes may not be immediately capable of providing documentation establishing domicile within the application State under the CLP and CDL regulations.

CVTA's Request

The CVTA requests that FMCSA provide a limited 90-day waiver allowing the SDLAs the same flexibility that the DHS provides in its Real ID rules (see 6 CFR 37.11(h)), when, for reasons beyond their control, an applicant for a Real ID is unable to present necessary documents and must rely on alternate methods to establish identity. The CVTA also asks FMCSA to issue a waiver allowing CLP candidates to provide a temporary address for the purposes of obtaining the CLP and CDL. The organization suggests that States limit the duration of the CDL document to 6 months before it must be renewed and require a long-term or permanent address at that time. CVTA argues that the limitations of the waiver would achieve the requisite level of safety by preventing individuals from maintaining a CDL with no known permanent address.

FMCSA Decision

FMCSA has reviewed the CVTA request and DHS' exception process in 6 CFR 37.11(h)) and concluded that the waiver is needed to address the unique, non-emergency situation caused by hurricanes Irma and Maria. The aftermath of those hurricanes resulted in a significant number of citizens of Puerto Rico relocating to various States. While FMCSA's rules under 49 CFR part 383 do not include an exception process for proof of U.S. citizenship or legal permanent residence for individuals seeking a CLP or CDL, the Agency believes the DHS exception process in 6 CFR 37.11(h) provides a proven alternative for use in dealing with individuals who, for reasons beyond their control, are unable to present the required documents and must rely on alternate methods to establish U.S. citizenship or legal permanent residence. Because the exception process has been proven effective by DHS and the States, FMCSA believes the waiver would achieve the requisite level of safety provided by complying with 383.71(a)(2)(v), 49 CFR 383.71(b)(9), 49 CFR 383.73(a)(2)(vi), and 49 CFR 383.73(b)(6) concerning proof of U.S. citizenship or legal permanent residence.

Because the initial relocation from Puerto Rico would take place shortly before the drivers begin the training necessary to obtain a CLP, these individuals likely will be unable to provide the documentation necessary to establish a ''State of domicile'' as defined in 49 CFR 383.5 prior to the completion of the CDL training program and the acceptance of a job driving commercial motor vehicles. The CVTA's request suggests a 6-month period for those individuals obtaining a CDL to provide proof of permanent domicile within a State, subsequently updating the CDL record with a permanent address and thereby satisfying the domicile requirements. FMCSA believes the 6-month limitation, the States' use of the DHS exceptions for these CDL applicants to provide legal permanent residence or U.S. citizenship, and the other conditions stated below would achieve the requisite level of safety that would otherwise be provided by requiring proof of domicile at the time of application under 49 CFR 383.71(a)(2)(vi), 49 CFR 383.71(b)(10), 49 CFR 383.73(a)(2)(vi), and 49 CFR 383.73(b)(6).

Terms and Conditions of the Waiver

FMCSA grants former residents of Puerto Rico relocating as a result of hurricanes Irma and Maria a limited 90-day waiver from 49 CFR 383.71(a)(2)(v) and 383.71(b)(9) concerning proof of U.S. citizenship or legal permanent residence. FMCSA also grants SDLA's a limited 90-day waiver from 49 CFR 383.73(a)(2)(vi) and 383.73(b)(6) concerning proof of U.S. citizenship or legal permanent residence. SDLAs choosing to assist Puerto Rican citizens under this waiver must follow DHS's exception process.

FMCSA grants former residents of Puerto Rico relocating as a result of hurricanes Irma and Maria, a limited 90-day waiver from the requirement to provide proof of domicile at the time of application under 49 CFR 383.71(a)(2)(vi) and 383.71(b)(10). FMCSA also grants SDLAs a limited 90-day waiver from 49 CFR 383.73(a)(vi), 383.73(b)(6) and authorizes them to extend the time within which an applicant must provide proof of domicile and issue a CLP or CDL under the limitations set forth in this waiver. Under this waiver, at the time of application, the CLP applicant must be actively enrolled in a CDL training school within the State of application and provide proof of that enrollment. A CLP document issued under this waiver may not be valid for more than 90 days. The CLP must include all other CLP regulatory requirements. Should any individual with a CLP granted under this waiver leave the training program for any reason prior to earning a CDL, the CLP shall be cancelled by the SDLA immediately. The SDLA shall be responsible for implementing any procedures within the State to ensure compliance with this requirement.

A CDL issued under this waiver is limited to six months validity and may not be renewed unless the State complies with 383.73(b)(6) and requires the individual to comply with 49 CFR 383.71(a)(2)(vi) by providing proof that the State to which the application is made is the applicant's State of domicile as defined by 383.5. The SDLA must submit to *MCPSD@dot.gov* a list of all individuals who are issued CLPs or CDLs under the terms and conditions of this waiver, on a monthly basis. The SDLA must comply with all other requirements of parts 383.71 and 383.73.

This waiver is applicable February 20, 2018 through May 21, 2018.

Safety Considerations

Considering the limited period of this waiver, the fact that it does not alter any of the knowledge and skills testing requirements for obtaining a CDL, and the conditions set forth above, the Agency has determined that the waiver is likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulations.

Issued on: February 9, 2018.

Cathy F. Gautreaux,

Deputy Administrator.

[FR Doc. 2018–03362 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0352]

Commercial Driver's License Standards: Recreation Vehicle Industry Association Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; renewal of exemption.

SUMMARY: FMCSA reaffirms its renewal of the Recreation Vehicle Industry Association's (RVIA) exemption from the Federal commercial driver's license (CDL) requirements for drivers who deliver certain newly manufactured motorhomes and recreational vehicles (RV) to dealers or trade shows before retail sale (driveaway operations). The FMCSA announced its decision to renew RVIA's exemption on April 12, 2017, pending a review of any comments received in response to that notice. Three comments were submitted, none opposing the renewal. The Agency has determined that RVIA's operations may continue in accordance with the terms and conditions of the exemption renewal announced in April. The Agency believes that drivers who qualify for the exemption will maintain a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the CDL requirements.

DATES: This renewed exemption expires on April 6, 2022.

ADDRESSES:

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit 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., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

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: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614–942–6477. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2014–0352 in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document 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., ET, Monday through Friday, except Federal holidays.

II. Legal Basis

The FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to renew exemptions for up to 5 years if it finds that ''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'' (49 U.S.C. 31315(b)(1)). The FMCSA evaluated RVIA's application on its merits and decided to renew the exemption from 49 CFR 383.91(a)(1)–(2) for a 5-year period, as previously announced in the **Federal Register** on April 12, 2017 (82 FR 17734).

III. Application for Renewal Exemption

The RVIA requested renewal of an exemption from the CDL requirement under 49 CFR 383.91(a)(1)–(2) to allow drivers engaged in driveaway deliveries of RVs with gross vehicle weight ratings of 26,001 pounds or more not be required to have a CDL as long as the empty RVs have gross vehicle weights or gross combination weights that do not meet or exceed 26,001 pounds, and any RV trailers towed by other vehicles weigh 10,000 pounds or less. The initial exemption was granted on April 6, 2015 (80 FR 18493) and expired on April 6, 2017.

V. Public Comments

On April 12, 2017, FMCSA published its decision to grant a 5-year renewal (until 2022) of RVIA's original exemption, and asked for public comment (82 FR 17734). Three comments supported the exemption renewal; none opposed it. There were no opposing comments. Mr. Scott Munson in collaboration with Mr. Jack Alexander wrote, ''We believe a change to the wording of this regulation could add significant clarity to the portion describing required weight ratings.''

An anonymous commenter stated that ''This exemption should be promulgated as an amendment to 49 CFR 383.3.''

The American Truck Dealers Division of the National Automobile Dealers Association (ATD) also commented. The ATD wrote, ''In lieu of renewing the existing exemption, ATD petitions the FMCSA to issue a direct final rule amending its CDL applicability regulation (49 CFR 383.3) to codify a permanent exception. In addition, ATD urges the FMCSA to expand the exemption/exception to cover all new and empty CMVs with actual unloaded (curb) weights or combination weights of less than 26,000 lbs. As with RVs, an expanded exemption/exception would be limited to empty new vehicles, including trucks and tractors transported from vehicle manufacturer or importer facilities and holding areas to dealerships, and from dealerships to first purchasers.''

All comments are available for review in the docket for this notice.

Response to Public Comments and Agency Decision

The FMCSA has evaluated the public comments, and affirms its decision to renew the exemption. The RVs covered by the exemption all have gross vehicle weight ratings (GVWRs) above the 26,001-pound threshold for a CDL, but their actual weights, *i.e.,* their gross vehicle weights (GVWs), will remain below that level during the driveaway or towaway operation of these vehicles. The Agency has held since 1993 that the CDL regulations do not apply to drivers of RVs, ''if the vehicle is used strictly for non-business purposes'' [Guidance to Q. 3 under 49 CFR 383.3, 58 FR 60734, at 60735, Nov. 17, 1993; posted on *www.fmcsa.dot.gov*]. For decades private owners and drivers of larger RVs, like those addressed in this exemption, have operated without CDLs, often at GVWs well above the 26,001-pound threshold, without generating any concern among law enforcement professionals that they pose a risk to highway safety. Furthermore, most private RV owners almost certainly have less experience behind the wheel of the RV than drivers employed specifically to deliver such vehicles to a dealer or customer. While RVIA demonstrated that the manufacturers and dealers who now employ CDL-holders in driveaway/towaway operations have a recordable accident rate far below the level that

would require an unsatisfactory safety rating, the Agency's experience with private RV owners suggests that the absence of a CDL would have no discernible effect on safety. That is especially likely because the drivers covered by this exemption are required to comply with all other applicable safety regulations, including medical standards and hours-of-service limits. The FMCSA continues to believe that it is impracticable for these drivers to obtain a CDL with a representative vehicle when the actual vehicle they will operate is an RV.

With regard to ATD's recommendation to issue a direct final rule to make this exception permanent, FMCSA does not believe such an action is appropriate at this time.

The Agency does not believe that drivers covered by this exemption will experience any deterioration of their safety record.

Unless exempt motor carriers fail to maintain the terms and conditions specified in the April 12, 2017, decision, the exemption will remain in effect through April 6, 2022.

Issued on: February 6, 2018.

Cathy F. Gautreaux,

Deputy Administrator.

[FR Doc. 2018–03367 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2018–0008–N–2]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA), this notice announces that FRA is forwarding the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On December 11, 2017, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before March 22, 2018.

ADDRESSES: Submit written comments on the ICR to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Safety Regulatory Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue SE, Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292); or Ms. Kim Toone, Information Collection Clearance Officer, Office of Administration, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132).

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8–12. On December 11, 2017, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which it is now seeking OMB approval. *See* 82 FR 58265. FRA received one comment in response to this notice.

On January 24, 2018, Dennis J. Fixler, the Chief Economist of the Bureau of Economic Analysis (BEA), sent an electronic letter expressing BEA's strong support of the continued collection of data by FRA on the Accident/Incident Reporting and Recordkeeping forms. He noted that the data collected on these forms are crucial to key components of BEA's economic statistics. In his letter, Dr. Fixler stated that BEA uses data collected on these forms to prepare estimates of the employee compensation component of national income and state personal income. Specifically, Dr. Fixler stated that data on the number of employee injuries and deaths from forms FRA F6180.55 and FRA F 6180.55a, Railroad Injury and Illness Summary, are used to prepare estimates of workers' compensation for the railroad industry, and that these same data are used to prepare estimates of workers' compensation for the railroad industry by State.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are specifically invited on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance:

Title: Accident/Incident Reporting and Recordkeeping.

OMB Control Number: 2130–0500.

Abstract: The collection of information is due to the railroad accident reporting regulations in 49 CFR part 225 that require railroads to submit monthly reports summarizing collisions, derailments, and certain other accidents/incidents involving damages above a periodically revised dollar threshold, as well as certain injuries to passengers, employees, and other persons on railroad property. Because the reporting requirements and the information needed regarding each category of accident/incident are unique, a different form is used for each category.

FRA hereby informs the regulated community of railroads and the general public that it is revising the instructions for Form FRA F 6180.57, Highway-Rail Grade Crossing Accident/Incident Report, to capture information concerning post-accident toxicological testing for certain human factor highway-rail grade crossing accidents and incidents in the narrative block of this form. The newly revised 49 Code of Federal Regulations (CFR) 219.201(a), effective on June 12, 2017, requires post-accident toxicological testing of railroad employees under various, enumerated

circumstances, and include certain human-factor categories of highway-rail grade crossing accidents and incidents (49 CFR 219.201(a)(5)). *See* 81 FR 37894 (June 10, 2016).

FRA will begin the process to add a block to Form FRA F 6180.57 to accommodate this requirement. In the interim, if railroads perform drug and alcohol testing on any employee or employees involved in a highway-rail grade crossing accident, FRA is requesting the railroad place the drug and alcohol coding information in Item No. 54, ''Narrative Description'', of Form FRA F 6180.57.

In accordance with the requirements of the PRA, on February 28, 2017, FRA transmitted to OMB its renewal submission for this collection of information. This submission increased the agency estimate of the annual number of forms completed for Form FRA F 6180.57 by 160 forms from the previously approved submission to OMB (from a total of 2,000 to 2,160 forms). FRA estimated two hours as the average burden time to complete Form FRA F 6180.57, including the time for the information to be placed in the narrative block of the form. OMB cleared this renewal submission approving a total burden of 46,577 hours and 109,440 responses on June 2, 2017, and extended the previous clearance for another three years. The new expiration date for this information collection is now June 30, 2020. FRA now seeks approval for this change to the Form 57 instructions.

Type of Request: Extension with change of a current information collection.

Affected Public: Businesses.

Form(s): FRA F 6180.39i; 54; 55; 55A; 56; 57; 78; 81; 97; 98; 99; 107; 150.

Respondent Universe: 744 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 109,440.

Total Estimated Annual Burden: 46,577 hours.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to a collection of information, unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Acting Deputy Chief Counsel.

[FR Doc. 2018–03360 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2018–0008–N–1]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA), this notice announces that FRA is forwarding the Information Collection Requests (ICRs) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the information collections and their expected burden. On October 11, 2017, FRA published a notice providing a 60-day period for public comment on the ICRs.

DATES: Interested persons are invited to submit comments on or before March 22, 2018.

ADDRESSES: Submit written comments on the ICRs to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Safety Regulatory Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue SE, Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292); or Ms. Kim Toone, Information Collection Clearance Officer, Office of Administration, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132).

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8–12. On October 11, 2017, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICRs for which it is now seeking OMB approval. *See* 82 FR 47595. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICRs regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summaries below describe the ICRs that FRA will submit for OMB clearance as the PRA requires:

Title: Occupational Noise Exposure for Railroad Operating Employees.

OMB Control Number: 2130–0571.

Abstract: FRA uses the collection of information to ensure railroads covered by this rule establish and implement noise monitoring, hearing conservation, and audiometric testing programs. This collection also includes hearing conservation training programs that protect railroad employees from the damaging and potentially dangerous effects of excessive noise in the everyday rail environment.

Request: Extension with change of a current information collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 502 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 164,734.

Total Estimated Annual Burden: 28,311 hours.

Title: Conductor Certification.

OMB Control Number: 2130–0596.

Abstract: FRA's conductor certification regulation (49 CFR part 242) requires railroads to have a formal program for certifying conductors. As part of that program, railroads are required to have a formal process for training prospective conductors and determining that all persons are competent before permitting them to serve as a conductor. FRA intended the regulation to ensure that only those persons who meet minimum Federal safety standards serve as conductors. FRA collects information to ensure that railroads and their employees fully comply with all the requirements of part 242, including a conductor certification/recertification program, fitness requirements, initial and periodic testing of conductors, territorial qualifications, etc.

Type of Request: Extension with change of a current information collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 704 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 268,799.

Total Estimated Annual Burden: 856,406 hours.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Acting Deputy Chief Counsel.

[FR Doc. 2018–03361 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0023]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MY WAY; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 22, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0023. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MY WAY is:

—INTENDED COMMERCIAL USE OF VESSEL: ''The vessel will be chartered for up to six passengers to participate in sailboat racing.''

—GEOGRAPHIC REGION: ''Illinois, Wisconsin, Michigan and Indiana''

The complete application is given in DOT docket MARAD–2018–0023 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy*. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

By Order of the Maritime Administrator.

Dated: February 14, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–03353 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0021]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel HOKULE'A; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 22, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0021. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above

address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel HOKULE'A is:

—*Intended Commercial Use of Vessel:* ''Fishing Charters and or Tours'' for small groups''

—*Geographic Region:* ''Alaska (excluding waters in Southeast Alaska)''

The complete application is given in DOT docket MARAD–2018–0021 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy*. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

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By Order of the Maritime Administrator.

Dated: February 14, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–03356 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0025]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel NO LIMITS; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 22, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0025. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel NO LIMITS is:

—*Intended Commercial Use of Vessel:* ''4, 6, or 8 Hr Charters in South Florida''

—*Geographic Region:* ''Florida''

The complete application is given in DOT docket MARAD–2018–0025 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy*. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

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By Order of the Maritime Administrator.

Dated: February 14, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–03354 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD–2018–0026]

Request for Comments on the Renewal of a Previously Approved Information Collection: Shipbuilding Orderbook and Shipyard Employment

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected is necessary in order for MARAD to perform and carry out its duties required by the Merchant Marine Act of 1936 as amended. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before April 23, 2018.

ADDRESSES: You may submit comments identified by Docket No. DOT–MARAD–2018–0026 through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search using the above DOT docket number and 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.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gearhart, 202–366–1867, Office of Shipyards and Marine Engineering, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Shipbuilding Orderbook and Shipyard Employment.

OMB Control Number: 2133–0029.

Type of Request: Renewal of a Previously Approved Information Collection.

Form Numbers: MA–832.

Abstract: In compliance with 46 U.S.C. 50102 (2007), the Merchant Marine Act of 1936, as amended, MARAD conducts this survey to obtain information from the shipbuilding and ship repair industry to be used primarily to determine, if an adequate mobilization base exists for national defense and for use in a national emergency.

Respondents: Owners of U.S. shipyards who agree to complete the requested information.

Affected Public: Owners of U.S. shipyards who agree to complete the requested information.

Estimated Number of Respondents: 200.

Estimated Number of Responses: 200.

Estimated Hours per Response: 30 minutes.

Annual Estimated Total Annual Burden Hours: 100.

Frequency of Response: Annually.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

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By Order of the Maritime Administrator.

Dated: February 14, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–03351 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0024]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PENINGO; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 22, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0024. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PENINGO is:

—*Intended Commercial Use of Vessel:* ''3 hour sailing and limited 8-hour sailing charters in New England coastal waters. Sailing will be almost exclusively in and around Boston harbor''

—*Geographic Region:* ''Massachusetts, Maine, Rhode Island, Connecticut, New York (excluding New York Harbor)''

The complete application is given in DOT docket MARAD–2018–0024 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to

www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy*. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

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By Order of the Maritime Administrator.

Dated: February 14, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–03355 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0022]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ECLIPSE; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 22, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0022. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ECLIPSE is:

—*Intended Commercial Use of Vessel:* ''The vessel will be chartered for up to six passengers to participate in sailboat racing.''

—*Geographic Region:* ''Illinois, Wisconsin, Michigan and Indiana''

The complete application is given in DOT docket MARAD–2018–0022 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy*. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

By Order of the Maritime Administrator.

Dated: February 14, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–03352 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0039]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for public comment on extension of a currently approved collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before April 23, 2018.

ADDRESSES: You may submit comments identified by DOT Docket No. NHTSA–2017–0039 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online 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, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. 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.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Alex Ansley, Recall Management Division (NEF–107), NHTSA, 1200 New Jersey Ave. SE, Room W48–301, Washington, DC 20590. Telephone: (202) 493–0481.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including 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.

In compliance with these requirements, NHTSA asks for public comments on the following collection of information:

Title: Petitions for Hearings on Notification and Remedy of Defects.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2127–0039.

Affected Public: Businesses or others for profit.

Abstract: Sections 30118(e) and 30120(e) of Title 49 of the United States Code specify that any interested person may petition NHTSA to hold a hearing to determine whether a manufacturer of motor vehicles or motor vehicle equipment has met its obligation to notify owners, purchasers, and dealers of vehicles or equipment of a safety-related defect or noncompliance with a Federal motor vehicle safety standard in the manufacturer's products and to remedy that defect or noncompliance.

To implement these statutory provisions, NHTSA promulgated 49 CFR part 557, Petitions for Hearings on Notification and Remedy of Defects. Part 557 establishes procedures providing the submission and disposition of petitions for hearings on the issue of whether the manufacturer has met its obligation to notify owners, purchasers, and dealers of safety-related defects or noncompliance, or to remedy such defects or noncompliance free of charge.

Estimated Annual Burden: During NHTSA's last renewal of this information collection, the agency estimated it would receive one petition a year, with an estimated one hour of preparation for each petition, for a total of one burden hour per year. That estimate remains unchanged with this notice.

Number of Respondents: 1.

Jeffrey M. Giuseppe,

Associate Administrator for Enforcement.

[FR Doc. 2018–03344 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2017–0073 (Notice No. 2018–05)]

Hazardous Materials: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on an information collection pertaining to hazardous materials transportation for which PHMSA intends to request renewal from the Office of Management and Budget. On September 28, 2017, PHMSA published a notice with a 60-day comment period soliciting comments on this Information Collection Renewal [82 FR 45361] under Docket No. PHMSA–2017–0073 (Notice No. 2017–04). PHMSA received five comments; however, they were outside the scope of the September 28, 2017, notice and the Hazardous Materials Regulations.

DATES: Interested persons are invited to submit comments on or before March 22, 2018.

ADDRESSES: You may submit comments, identified by Docket No. PHMSA–2017–0073 (Notice No. 2018–05), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; Room W12–140 on the ground 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 include the agency name and Docket Number (PHMSA–2017–0073) for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS) and will include any personal information provided.

Requests for a copy of an information collection should be directed to Steven Andrews or Shelby Geller, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

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: Steven Andrews or Shelby Geller, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), title 5, Code of Federal Regulations (CFR) requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to the Office of Management and Budget (OMB) for renewal and extension. This information collection is contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collection was last approved. The following information is provided for this information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a 3-year term of approval for this information collection activity and will publish a notice in the **Federal Register** upon OMB's approval.

PHMSA requests comments on the following information collection:

Title: Hazardous Materials Shipping Papers & Emergency Response Information.

OMB Control Number: 2137–0034.

Summary: This information collection is for the requirement to provide a shipping paper and emergency response information with shipments of hazardous materials. Shipping papers are a basic communication tool in the transportation of hazardous materials and, by definition (*see* 49 CFR 171.8), include a shipping order, bill of lading, manifest, or other shipping document serving a similar purpose and containing the information required by §§ 172.202, 172.203, and 172.204 of the HMR. A shipping paper with emergency response information must accompany most hazardous materials shipments and be readily available at all times during transportation.

Shipping papers serve as the principal source of information regarding the presence of hazardous materials, identification, quantity, and emergency response procedures. They inform on compliance with other requirements (*i.e.,* the placement of rail cars containing different hazardous materials in trains); prevent the loading of poisons with foodstuffs; maintain the separation of incompatible hazardous materials; and limit the amount of radioactive materials that may be transported in a vehicle or aircraft. Shipping papers and emergency response information also notify transport workers that hazardous materials are present and serve as a principal means of identifying hazardous materials during transportation emergencies. Firefighters, police, and other emergency response personnel are trained to obtain the DOT shipping papers and emergency response information when responding to hazardous materials transportation emergencies. The availability of accurate information concerning hazardous materials being transported significantly improves response efforts in these types of emergencies.

Affected Public: Shippers and carriers of hazardous materials in commerce.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 260,000.

Total Annual Responses: 175,234,493.

Total Annual Burden Hours: 4,598,685.

Frequency of Collection: On occasion.

Issued in Washington, DC, on February 13, 2018.

William S. Schoonover,

Associate Administrator of Hazard Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2018–03335 Filed 2–16–18; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions.

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The list of Specially Designated Nationals and Blocked Persons (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*http://www.treasury.gov/ofac*).

Notice of OFAC Actions

On February 14, 2018, OFAC determined that the property and interests in property of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. GARCIA ROJAS, Javier (a.k.a. ''EL PARIENTE''; a.k.a. ''MARACUYA''), Medellin, Colombia; DOB 27 Oct 1960; POB Florencia, Caqueta, Colombia; citizen Colombia; Gender Male; Cedula No. 12971151 (Colombia) (individual) [SDNTK] (Linked To: AGROCONSTRUCCIONES LAS PALMERAS S.A.S.; Linked To: MMAG AGRICULTURA GLOBAL S.A.S.). Designated pursuant to section 805(b)(2) of the Kingpin Act, 21 U.S.C. 1904(b)(2), for materially assisting in, or providing support for or to, or providing goods or services in support of, the international narcotics trafficking activities of Jose Bayron PIEDRAHITA CEBALLOS and LA OFICINA DE ENVIGADO.

2. GARCIA ROJAS, Ruth, Colombia; DOB 20 Dec 1967; POB Puerto Asis, Putumayo, Colombia; citizen Colombia; Gender Female; Cedula No. 31971911 (Colombia); Tarjeta Profesional 186785 (Abogado) (Colombia) (individual) [SDNTK] (Linked To: INVERSORA PINZON Y GARCIA S. EN C.S. EN LIQUIDACION). Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being directed by, or acting for or on behalf of, Jose Bayron PIEDRAHITA CEBALLOS and Javier GARCIA ROJAS.

3. HERNANDEZ DURANGO, Wilton Cesar, Medellin, Colombia; DOB 10 Dec

1974; POB Medellin, Antioquia, Colombia; citizen Colombia; Gender Male; Cedula No. 70326525 (Colombia) (individual) [SDNTK] (Linked To: EUROMECANICA). Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being directed by, or acting for or on behalf of, Jose Bayron PIEDRAHITA CEBALLOS and Ruth GARCIA ROJAS.

Entities

1. AGROCONSTRUCCIONES LAS PALMERAS S.A.S., Carrera 43 A 1 Sur 220 Interior 706, Medellin, Antioquia, Colombia; NIT # 900609147–4 (Colombia) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by Javier GARCIA ROJAS.

2. EUROMECANICA, Calle 44 74 83, Medellin, Antioquia, Colombia; Matricula Mercantil No. 21–573208–02 (Medellin) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by Wilton Cesar HERNANDEZ DURANGO.

3. INVERSORA PINZON Y GARCIA S. EN C.S. EN LIQUIDACION (a.k.a. INVERSORA PINZON Y GARCIA S. EN C.S.), Cl. 15A Nro. 106 13 13 Casa, Cali, Valle, Colombia; Cl. 15A Nro. 106 13 13C, Cali, Valle, Colombia; NIT # 805024080–3 (Colombia) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by Ruth GARCIA ROJAS.

4. MMAG AGRICULTURA GLOBAL S.A.S. (f.k.a. JAVIER GARCIA ROJAS E.U.; a.k.a. MAG AGRICULTURA GLOBAL S.A.S.), Carrera 43 A 1 Sur 220 Oficina 706, Medellin, Antioquia, Colombia; NIT # 813003117–6 (Colombia) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by Javier GARCIA ROJAS.

Dated: February 14, 2018.

Andrea M. Gacki

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2018–03357 Filed 2–16–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity: Department of Veterans Affairs (VA) Post-Separation Transition Assistance Program (PSTAP) Assessment Survey

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 23, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900—NEW'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506 of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 112–56, 221–225, 125 Stat. 715–718.

Title: Department of Veterans Affairs (VA) Post-Separation Transition Assistance Program (PSTAP) Assessment Survey.

OMB Control Number: 2900—NEW.

Type of Review: New Collection.

Abstract: The PSTAP Assessment Survey will be used by VA to assess how the TAP training for Transitioning Servicemembers (TSMs) prepares Veterans for civilian life. This new information collection request (ICR) will be conducted once per year and is designed as a longitudinal survey. In the first year of data collection, the survey will be fielded to all Veterans who meet the criteria at the time of fielding of having separated from the military at six months, one year, and three years prior to the date that surveys (first mailing will solicit electronic responses) will be mailed. Civilian life readiness will measure domains of a TSM's life including employment, entrepreneurship, mental/physical health, social relationships, financial situation, and housing. In addition, the survey will assess if TSMs understand and utilize their available VA benefits, and which TAP curriculum modules (tracks) are the most and least useful.

Affected Public: Individuals.

Estimated Annual Burden: 4,210 hours.

Estimated Average Burden per Respondent: 18.5 minutes.

Frequency of Response: Annual.

Estimated Number of Respondents: 13,655.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–03332 Filed 2–16–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Cooperative Studies Scientific Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act that the Cooperative

Studies Scientific Evaluation Committee will hold a meeting on April 4–5, 2018, at the Veterans Health Administration National Conference Center, 2011 Crystal Drive, Suite 150, Arlington, VA. The meeting will begin at 8 a.m. and end at 4:30 p.m. on April 4, 2018, and begin at 8 a.m. and end at 3:45 p.m. on April 5, 2018.

The Committee advises the Chief Research and Development Officer on the relevance and feasibility of proposed projects and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public for approximately 30 minutes at the start of the meeting for the discussion of administrative matters and the general status of the program. The remaining portion of the meeting will be closed to the public for the Committee's review, discussion, and evaluation of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by section 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

The Committee will not accept oral comments from the public for the open portion of the meeting. Those who plan to attend or wish additional information should contact Dr. Grant Huang, Acting Director, Cooperative Studies Program (10P9CS), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at (202) 443–5700 or by email at *grant.huang@va.gov*. Those wishing to submit written comments may send them to Dr. Huang at the same address and email.

Dated: February 13, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–03288 Filed 2–16–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0049]

Agency Information Collection Activity Under OMB Review: Request for Approval of School Attendance and School Attendance Report

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 22, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to ''OMB Control No. 2900–0049'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov*. Please refer to ''OMB Control No. 2900–0049'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Request for Approval of School Attendance (VA Forms 21–674 and 21–674c) and School Attendance Report (VA Form 21–674b).

OMB Control Number: 2900–0049.

Type of Review: Extension of a currently approved collection.

Abstract: Recipients of disability compensation, dependency and indemnity compensation, disability pension, and death pension, are entitled to benefits for eligible children between the ages of 18 and 23 who are attending school. VA Forms 21–674, 21–674b, and 21–674c, are used to confirm school attendance of children for whom VA compensation or pension benefits are being paid and to report any changes in entitlement factors; including marriages, a change in course of instruction, and termination of school attendance.

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 82 FR 237 on December 12, 2017, page 58482.

Affected Public: Individuals and households.

Total Estimated Annual Burden: 37,792 hours.

Estimated Burden per Respondent:

a. 15 minutes for VA Forms 21–674 and 21–674c.

b. 5 minutes for VA Form 21–674b.

Frequency of Response: Once.

Total Estimated Number of Respondents: 177,500.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–03331 Filed 2–16–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0043]

Agency Information Collection Activity: Application Request To Add and/or Remove Dependents

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 23, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System

(FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0043'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506 of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Application Request To Add and/or Remove Dependents (VA Form 21–686c).

OMB Control Number: 2900–0043.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–686c is used to obtain current information about marital status and dependent child(ren). This information is needed to determine the correct rate of payment for veterans and beneficiaries who may be entitled to an additional allowance for dependents or to remove dependents.

Affected Public: Individuals and households.

Estimated Annual Burden: 113,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 226,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–03333 Filed 2–16–18; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Justice

Drug Enforcement Administration

Trinity Pharmacy II; Decision and Order; Notice

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 15–28]

Trinity Pharmacy II; Decision and Order

On July 10, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Trinity Pharmacy II, Inc. (hereinafter ''Trinity II'' or Respondent), which proposed the revocation of its DEA Certificate of Registration FT0531586, pursuant to which Trinity II is authorized to dispense controlled substances in schedules II through V as a retail pharmacy, at the registered location of 1474 South Belcher Road, Clearwater, Florida. Administrative Law Judge Exhibit (ALJ Ex.) 1b, at 1. As grounds for the proposed action, the Show Cause Order alleged that Respondent's ''continued registration is inconsistent with the public interest.'' *Id.* (citing 21 U.S.C. 823(f) and 824(a)(4)).

More specifically, the Show Cause Order set forth seven independent reasons why Respondent's registration should be revoked. *Id.* at 2–17. *First,* the Show Cause Order charged that, between February 2012 and February 2014, Trinity II ''committed acts as would render its continued registration inconsistent with the public interest'' pursuant to 21 U.S.C. 824(a)(4) because Respondent (1) ''failed to comply with applicable federal and Florida state laws relating to controlled substances'' (citing 21 U.S.C. 823(f)(4)) and (2) ''exhibited negative experience in its dispensing of controlled substances'' (citing 21 U.S.C. 823(f)(2)). *Id.* at 1, 2. During this period, the Order alleged that pharmacists at Trinity II ''filled [prescriptions for] and dispensed controlled substances on numerous occasions outside the usual course of pharmacy practice and in contravention of their corresponding responsibility,'' and that such pharmacists did so even when such prescriptions ''contained one or more 'red flags' [f]or drug abuse or diversion without resolving the red flag(s) and, in certain circumstances, w[h]ere the red flags were unresolvable.'' *Id.* at 2–3 (citing *Holiday CVS, L.L.C., d/b/a CVS Pharmacy Nos. 219 and 5195,* 77 FR 62316, 62321–22 (2012)).

The Show Cause Order listed six red flags of diversion which Respondent's pharmacists allegedly failed to resolve before dispensing prescriptions, including: (1) ''[e]arly [f]ills,'' in which nine customers sought ''to fill a new controlled substance prescription or refill an existing controlled substance prescription well before the customer should have exhausted the supply . . . obtained from the previous prescription;'' (2) unusual distance traveled, in which six customers ''present[ed] a prescription bearing an address for the customer and doctor showing that the customer had travelled an unusual or suspicious route to obtain their prescriptions and fill them at Trinity II;'' (3) ''[c]ocktail prescriptions,'' in which eight customers ''present[ed] multiple prescriptions that provided the individual with the cocktail of an opioid, a benzodiazepine, and a muscle relaxer;'' (4) ''[d]uplicative drug therapies,'' whereby eight customers ''present[ed] multiple prescriptions which provided the person duplicative drug treatment;'' (5) ''[t]wo prescriptions for the same drug,'' in which 10 ''customers present[ed] two prescriptions for the same drug on the same date;'' and (6) ''pattern prescribing,'' or a lack of individualized drug therapy, in which two sets of ''two individuals present[ed] prescriptions on the same day for the same drugs that were issued by the same prescriber.'' *Id.* at 3–14.

Second, the Show Cause Order charged Trinity II with violating federal law when it dispensed ''a Schedule II controlled substance outside the usual course of professional practice . . . and in contravention of its corresponding responsibility . . . [when it] filled a prescription for customer D.G.'' on November 8, 2013 for ''7 patches of Duragesic 50 mcg/hr (fentanyl).'' *Id.* at 14 (citing 21 CFR 1306.04(a), 1306.06). The Order alleged that Trinity II filled this prescription even though D.G. had 12 days left on a prescription issued by a different doctor and filled by Trinity II on October 21, 2013 for a ''thirty-day supply'' of fentanyl patches that should have lasted D.G. until November 20, 2013. *Id.* The Order further alleged that when Trinity II filled the second prescription for D.G. 12 days early, Trinity II ''ignored the bright red flags that D.G. was abusing and/or diverting the fentanyl by doctor-shopping and seeking an early fill of fentanyl.'' *Id.*

Third and *fourth,* the Show Cause Order charged that Trinity II violated federal law when it twice dispensed to D.G. ''a Schedule II controlled substance without a valid prescription,'' ''outside the usual course of professional practice,'' ''and in contravention of its corresponding responsibility.'' *Id.* at 14, 15 (citing 21 U.S.C. 829; 21 CFR 1306.04(a), 1306.06, 1306.11(a)). In the third charge, the Order alleged that D.G. presented Trinity II with a prescription dated November 15, 2013 ''for 15 patches of Duragesic 50 mcg/hr (fentanyl), a Schedule II controlled substance,'' that also contained the following instruction from the prescribing practitioner: ''NO EXCEPTIONS DO NOT FILL UNTIL 12–06–2013.'' *Id.* at 14. The Order alleged that Trinity II nevertheless filled the prescription on November 20, 2013. *Id.* In the fourth charge, the Order alleged that D.G. presented Trinity II with a prescription in December 2013, also ''for 15 patches of Duragesic 50 mcg/hr (fentanyl), a Schedule II controlled substance,'' that also contained the following instruction from the prescribing practitioner: ''NO EXCEPTIONS DO NOT FILL UNTIL 1–05–2014.'' *Id.* at 15. The Order alleged that Trinity II nevertheless filled the prescription on December 18, 2013. *Id.* As a result, and with respect to each of these charges, the Order alleged that Trinity II ''filled and dispensed this controlled substance to D.G. approximately two weeks before the prescriber had authorized it to do so, and, thus, before the prescription was valid for filling.'' *Id.* at 15.

Fifth, the Show Cause Order charged that, on eight occasions between July 12, 2012 and January 25, 2013, Trinity II violated federal law when it dispensed to J.T. ''a Schedule II controlled substance without a valid prescription'' and ''outside the usual course of professional practice.'' *Id.* (citing 21 U.S.C. 829; 21 CFR 1306.06, 1306.11(a)). Specifically, the Order alleged that Trinity II dispensed to J.T. ''a morphine sulfate solution'' ''that was five times more potent than the doctor had prescribed, and instructed J.T. to take a dosage amount that would result in him receiving five times the amount'' prescribed. *Id.* The Order further alleged that such prescriptions ''placed the health and safety of J.T. at risk and, thus, engaged in conduct that may have threatened the public health and safety'' pursuant to 21 U.S.C. 823(f)(5). *Id.* at 16.

Sixth, the Show Cause Order charged that ''Trinity II unlawfully distributed controlled substances in violation of federal and Florida state law by utilizing non-pharmacists to fill controlled substances prescriptions on numerous occasions between February, 2012 and February, 2014.'' *Id.* The Order alleged that when Trinity II allowed its non-pharmacist ''pharmacy interns'' to fill a prescription, it was not filled by a pharmacist ''acting in the usual course of his professional practice,'' pursuant to 21 CFR 1306.06, nor were Trinity II's pharmacists properly exercising their ''corresponding responsibility'' under 21 CFR 1306.04(a). *Id.* The Order further

alleged that such prescriptions violated Florida law's requirement that ''[a] pharmacist, in good faith and in the course of professional practice only, may dispense controlled substances.'' *Id.* (citing Fla. Stat., Ch. 893.04(1)).

Seventh, and lastly, the Show Cause Order charged that, ''if Trinity II's pharmacists in fact filled the prescriptions referenced in [the sixth charge], then Trinity II violated federal and Florida state law on numerous occasions between February 2012 and February 2014 by failing to maintain accurate records of the controlled substances it dispensed because they do not identify a pharmacist who filled the controlled substance prescription.'' *Id.* at 16–17 (citing 21 CFR 1304.22(c), 1306.06; Fla. Stat., Ch. 893.04(1)(c)(6)).

In a letter from its counsel dated August 12, 2015, Trinity II acknowledged receipt of the Show Cause Order and requested a hearing on the allegations. ALJ Ex. 2b. The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, CALJ), who proceeded to conduct pre-hearing proceedings as follows.[1]

On August 13, 2015, the CALJ issued an Order for Prehearing Statements (hereinafter, Prehearing Order). *See* ALJ Ex. 3b. In the Prehearing Order, the CALJ directed the Government to file its Prehearing Statement no later than 2 p.m. on August 24, 2015, Respondent to file its Prehearing Statement no later than 2 p.m. on September 8, 2015, and scheduled a Prehearing Conference for 1:30 p.m. on September 9, 2015. *Id.* at 1–2. The Order also directed the parties to provide the ''[n]ames and current addresses of all witnesses whose testimony is to be presented,'' and that if the Respondent's corporate representative intends to testify, the representative ''must be listed as a witness, and a summary of his/her testimony as described below must be provided.'' *Id.* at 2. The CALJ's Order provided the following instruction regarding the summaries of testimony:

> Brief summary of the testimony of each witness (counsel for the Government to indicate clearly each and every act, omission or occurrence upon which it relies in seeking to revoke the Respondent's [Certificate of Registration]; counsel for Respondent to indicate clearly each and every matter as to which Respondent intends to introduce evidence in opposition). The summaries are to state what the testimony will be rather than merely listing the areas to be covered. The parties are reminded that testimony not disclosed in the prehearing statements or pursuant to subsequent rulings is likely to be excluded at the hearing.

Id. The Order further emphasized that ''[f]ailure to timely file a prehearing statement *that complies with the directions provided above* may be considered a waiver of hearing and an implied withdrawal of a request for hearing.'' *Id.* at 3.

On August 21, 2015, the Government filed its Prehearing Statement. ALJ Ex. 4b. On August 24, 2015, the CALJ issued an ''Order Rescheduling Prehearing Conference'' moving the prehearing conference up to 10:30 a.m. on September 3, 2015 in light of Respondent's counsel's August 20, 2015 notice of a conflict with the scheduled hearing on October 26, 2015. ALJ Ex. 8b at 1.[2] Although this Order stated that ''[a]ll other dates specified in the [Prehearing Order], including the filing date for the Respondent's Prehearing Statement, remain in effect,'' *id.* at 1 n.1, the CALJ (through his staff) later requested that Respondent file its Prehearing Statement early. ALJ Ex. 10 at 1 n.1 (''Upon my realization that the status conference was now scheduled several days prior to the date that the Respondents' prehearing statements were due under the terms of the [Prehearing Order], chambers staff (at my direction) reached out to Respondents' counsel and requested (but not directed) that, if it was possible to do so, their prehearing statements be filed prior to the commencement of the now-rescheduled Status Conference . . . with the assurance that (as is customary) both sides would be permitted to file supplemental prehearing statements'').

Per the CALJ's request, Trinity II filed its ''Preliminary Prehearing Statement'' on September 3, 2015. ALJ Ex. 9b. Trinity II proposed to call 77 witnesses in addition to ''[a]ny and all witnesses identified in the Government's Prehearing Statement.'' *Id.* at 3–7. Trinity II then provided a ''Summary of Anticipated Testimony'' for nine of these witnesses, all of whom were the owners or employees of Trinity II. *Id.* at 7–14. Trinity II stated that it anticipated calling an expert witness but had not yet identified one ''given the preliminary nature of this statement.'' *Id.* at 14. Trinity II offered an identical one-sentence summary of the testimony for each of 39 ''patients,'' and a separate identical one-sentence summary of the testimony for each of 32 ''prescribing physicians.'' *Id.* at 14–15. Trinity II also proposed as documents for the hearing copies of ''all prescriptions, patient profiles and related documents maintained by Trinity Pharmacy II in connection with each patient described in the [Show Cause Order].'' *Id.* at 16.

On September 3, 2015, the CALJ conducted an on-the-record prehearing conference. During that conference, the CALJ noted the Government's motion to consolidate the hearings for Trinity II and Trinity Pharmacy I[3] (hereinafter, collectively, Respondents) and asked Respondents' counsel to file something confirming that Trinity I and Trinity II waive any potential conflict in having him represent them both at a consolidated hearing. Transcript (''Tr.'') 5; ALJ Ex. 10 n.4 (same).[4] The CALJ also noted during the proceedings that the Government was seeking an ''Order of Protection'' to limit disclosure of personally identifiable information of patients and confirmed that Respondent had no objection to such an order. Tr. 55–56. Lastly, the CALJ accepted Respondents' counsel's representation that neither Trinity I nor Trinity II were the subject of pending state administrative cases or ''criminal parallel proceedings.'' *Id.* at 63.

On September 4, 2015, the CALJ issued a ''Consolidation Order, Prehearing Ruling, and Protective Order'' (hereinafter ''Consolidation Order''). ALJ Ex. 10 at 2. In this Order, the CALJ granted the Government's request for the aforementioned protective order and the Government's motion to consolidate the hearings, and the CALJ directed all parties to file a consolidated exhibit and witness list by October 16, 2015. *Id.* at 2, 9–11. The Order noted that the parties would be able to cross-examine the others' witnesses and stated that the ''parties are also reminded that testimony not

[1] Respondent raised no objection to the adequacy of service.

[2] According to the CALJ, ''[t]he hearing commencement date [was] continued on multiple occasions at the Respondents' request.'' ALJ Ex. 34, at 1 n.1. The hearing was ultimately noticed to begin on January 4, 2016. ALJ Ex. 27.

[3] Trinity Pharmacy (''Trinity I''), located in Seminole, Florida, was served with a separate July 10, 2015 Order to Show Cause by the Government. ALJ Ex. 1a. Although the CALJ eventually ordered the consolidation of the evidentiary hearings for Trinity I and Trinity II, *see* ALJ Ex. 10 at 2, the CALJ wrote separate recommendations regarding each Respondent, and I therefore have written a separate Order regarding the disposition of the Show Cause Order directed at Trinity I.

[4] On November 13, 2017, Mr. Michael Stanton filed a ''Notice of Appearance on Behalf of Respondents'' in which he entered ''an appearance as co-counsel for Respondents, Trinity Pharmacy I and Trinity Pharmacy II, along with Dale Sisco of Sisco Law.'' ALJ Ex. 35b, at 2. Although both counsel maintained that they represented both Respondents, at the evidentiary hearing, Mr. Sisco stated that ''[f]or the purposes of this hearing, I will be representing Trinity I and questioning witnesses on behalf of that pharmacy,'' and Mr. Stanton stated that ''for purposes of this hearing and to avoid any duplication, I will be handling the objections and the questioning on behalf of Trinity II.'' Tr. 83–84.

summarized in prehearing statements, or supplements thereto, may be excluded at the hearing.'' *Id.* at 4. The Order also directed the parties to serve each other with all documents it intends to identify as exhibits no later than September 11, 2015, and directed Respondents to supply the identity and curriculum vitae of their proposed expert witness by September 18, 2015. *Id.* at 4, 8. The Order further directed the parties to file supplemental prehearing statements and any additional exhibits, as well as any motions seeking relief, by 2 p.m. on October 16, 2015, and any responsive filings by 2 p.m. on October 23, 2015. *Id.* at 8. Finally, the Order reminded the parties that ''documents not noticed in prehearing statements, or supplements thereto, or not timely supplied to the opposing party may (and likely will) be excluded at the hearing.'' *Id.* at 4.

Although the Prehearing Order had directed Trinity II to supply a compliant prehearing statement by September 8, 2015, ALJ Ex. 3b at 1, and the Order Rescheduling Prehearing Conference iterated that Trinity II's prehearing statement filing deadline remained the same, ALJ Ex. 8b at 1 n.1, Trinity II failed to do so. On September 24, 2015, the Government filed a Motion to Compel Respondents' Compliance with the Prehearing Order and the Consolidation Order and a Motion Requesting a New Supplemental Prehearing Statement and Motion Deadline. ALJ Exs. 11a, 11b.

On September 28, 2015, Respondents filed their response. ALJ Ex. 13. On the same day, the CALJ issued an Order that generally denied the Government's motions and stated that honoring the CALJ's request for an earlier prehearing statement may have caused Respondents to have had the:

> mistaken impression that compliant prehearing statements were no longer required until the filing of supplemental prehearing statements. To alleviate any remaining misunderstanding in this regard and to afford the Respondents the time and ability to file both a fulsome prehearing statement and a supplemental prehearing statement, it is ORDERED that Respondents are to file prehearing statements that comply with the terms of the [Prehearing Statement] no later than 2 p.m. on October 5, 2015.

ALJ Ex. 14, at 3–4.

On October 5, 2015, Trinity II filed its Prehearing Statement. ALJ Ex. 15b. Trinity II provided the names and address of 79 proposed witnesses, in addition to ''[a]ny and all witnesses identified in the Government's Prehearing Statement.'' *Id.* at 4–7. Trinity II also provided a ''Summary of Anticipated Testimony'' for nine witnesses who were either owners or employees of Trinity II, a putative expert, and short but similar descriptions of testimony for 39 patients and 32 prescribing physicians. *Id.* at 7–54.[5] The Prehearing Statement also identified 70 documents ''intended to be used at the consolidated hearing regarding both Trinity Pharmacy I and Trinity Pharmacy II.'' *Id.* at 55–57, 55 n.2. On October 15, 2015, Respondents filed a ''Consolidated Witness and Exhibit List'' that listed 133 witnesses, in addition to ''[a]ny and all witnesses identified in the Government's Prehearing Statement,'' 69 exhibits of ''[d]ocuments and information related to'' various individuals, and one exhibit that would be the CV of their putative expert. ALJ Ex. 15e.

On October 16, 2015, the Government filed its ''Consolidated Supplemental Prehearing Statement.'' ALJ Ex. 16a. In this filing, the Government proposed two new witnesses, provided a summary of their testimony, and provided additional summaries for the testimony of the fact and expert witness identified in the Government's original Prehearing Statement. *Id.* at 6–10. Lastly, the Government supplemented its list of proposed Government exhibits with a list of additional documents that it intended to introduce as exhibits at the hearing. *Id.* at 10–12. The Government also filed its consolidated witness list and exhibit list. ALJ Exs. 16b, 16c.

Trinity II did not file a supplemental prehearing statement or any other prehearing statement by October 16, 2015 as required by the CALJ's Consolidation Order. As a result, the Government filed a ''Motion in Limine to Exclude Certain Testimony.'' ALJ Ex. 28. In its Motion, the Government contended that Respondents had failed in their prehearing statements to follow the requirements set forth in the CALJ's prehearing orders; namely, to ''state what the testimony will be rather than merely listing areas to be covered'' for each proposed witness.'' *Id.* at 2 (internal citations omitted). For example, the Government noted that Respondents proposed 69 witnesses identified as patients and that ''nearly every single patient of the sixty-nine listed by the Respondents is expected to testify identically.'' *Id.* at 4. The Government contended that, not only did the proposed patient ''testimony fail to make clear exactly what 'information' each patient will 'confirm,' thus preventing the Government from determining what specific defense(s) Respondents allege; the [proposed] testimony also fails to provide any basis upon which the Government can evaluate [whether] such information is even relevant or material to this case.'' *Id.* at 4–5. Such proposed testimony, the Government argued, ''is nothing more than 'merely areas to be covered,' rather than any substantive recitation of 'what the testimony will be,' '' as the prehearing orders required, ''offering no facts that, if proven, would rebut the Government's *prima facie* case or offer credible evidence in mitigation. *Id.* Finally, the Government argued that ''it is unclear from the Respondents' Prehearing Statements how the purported testimony of these various patients related to each of the dispensing events charged in the [Show Cause Orders], and how it affected the pharmacist's compliance with the standard of care and exercise of his corresponding responsibility in each charged instance.'' *Id.*

With respect to the prescribing physicians that Respondents had proposed as witnesses, the Government noted that Respondents ''intend to call fifty-nine doctors as witnesses, who, again, will each testify identically. . . . Other than to blithely forecast that the physicians will approve their own prescriptions, Respondent provides no facts which, if proven, would rebut the Government's *prima facie* case.'' *Id.* at 6. This too, the Government contended, violated the requirement of the prehearing orders that the parties set forth ''what the testimony will be''

[5] For example, for patient S.B., Trinity II stated that it anticipated her testimony to be as follows:

> [S.B.] was a patient whose prescriptions are identified in the various categories of allegations contained in the July 10, 2015 Order to Show Cause issued to Trinity Pharmacy II. It is anticipated that [S.B.] will testify regarding the inquiry done by the pharmacists and the staff at Trinity II regarding verification of her prescriptions and for the resolution of any potential red flags. [S.B.] will further confirm the information obtained from her by Trinity Pharmacy II prior to any prescription being dispensed, including but not limited to explanations for any significant distances traveled, the type of payment they made for the prescriptions, the circumstances of any refills and physician authorization for same.

ALJ Ex. 15b, at 29. The proposed testimony of most of the other patients used similar language. *See id.* at 27–43. Likewise, the physician summaries used language similar or identical to the following example:

> [J.M.], M.D. was a prescribing physician for one or more of the patients who tendered prescriptions to Trinity Pharmacy II. [J.M.], M.D. will confirm the prescriptions he authorized were for a legitimate medical purpose and issued in the usual course of professional practice to patients that were known to him. Further, [J.M.], M.D. will describe his interaction with the pharmacists and staff at Trinity Pharmacy II, the authorization of refills or early fills, if any, and explanations for any duplicative drug therapy, combinations of medications or alleged ''drug cocktails.''

Id. at 45.

rather than ''areas to be covered.'' *Id.* The Government argued that the summary of the physicians' proposed testimony failed to disclose sufficient facts to allow the Government to determine what specific defenses Respondents allege, nor provide any basis upon which the Government can evaluate how such information is relevant to the charges in the Show Cause Order. *Id.* at 6–7.

In its Motion, the Government also challenged the adequacy of Respondents' disclosure of the proposed testimony of its owners and employees, contending that it too set forth ''a generalized statement of 'areas to be covered' '' rather than ''a summary of 'what the testimony will be' for each witness.'' *Id.* at 9. These generalized statements, the Government contended, failed ''to reveal the specific 'actions' each employee purportedly is going to 'describe' '' or ''to provide the Government (or the ALJ) any information upon which it can discern the relevance and materiality of the 'actions' to the issues to be litigated in this case.'' *Id.* Although Respondents stated in their prehearing statements that certain employees would testify to describe the ''process'' Trinity II used ''to verify prescriptions and resolve concerns, if any, regarding the validity of those prescriptions,'' the Government argued that the statements ''fail[ed] to provide any information about the 'process' '' employed to verify prescriptions and resolve concerns. *Id.* at 9–10. Similarly, the Government observed that Respondents' offer of testimony from employees who would provide ''a description and demonstration of the computer software used by the pharmacy in this process'' was not matched by a proposed ''exhibit containing each pharmacy's computer software that each witness purportedly would demonstrate for the court.'' *Id.* And while Respondents proposed its co-owners would testify about their knowledge of both their customers' medical conditions and the treating physicians efforts to ''resolve[ ] any concerns,'' the Government further alleged that Respondents failed to disclose ''each customer's medical condition . . . , how it related to each dispensing activity, or how and when each pharmacy purportedly became 'aware' of it.'' *Id.* at 11.

In its Motion, the Government also sought to preclude Respondents' proposed expert, Mr. Sam Badawi, from rendering an opinion concerning whether the prescriptions referenced in the Show Cause Orders ''were filled in compliance with federal and/or state law requirements.'' *Id.* at 14. Specifically, the Government alleged that Respondents failed to give the Government ''notice [of] a proposed opinion from Mr. Badawi as to the lawfulness of each prescription alleged in each'' Show Cause Order. *Id.* at 17 (''Respondents have had multiple opportunities to provide a compliant disclosure, yet have repeatedly failed to do so.'').

As a result of these alleged deficiencies, the Government requested that the CALJ exclude ''the non-conforming testimony'' set forth in its Motion because Respondents had only provided ''vague summaries of areas to be covered by the Respondent's witnesses'' that unduly prejudiced the Government. *Id.* at 18–19 (''Agency precedent favors exclusion of evidence when the names of witnesses and 'an adequate summary of their testimony' has 'not been previously disclosed as required by the ALJ's Order for Pre-Hearing Statements.' '') (citing *East Main Street Pharmacy,* 75 FR 66149, 66150 (2010)).

On November 5, 2015, the CALJ issued an ''Order Granting the Government's Unopposed Motion *in Limine* to Exclude Certain Testimony.'' ALJ Ex. 29. After noting the Government's timely filed Motion and that Respondents' deadline to file a responsive pleading was October 23, 2015, the CALJ noted:

> Respondents never filed a response. Not even a late or unpersuasive response. Nothing. The language of the [Prehearing Order] about the nature of the required notice proffers is clear and unambiguous; yet, notwithstanding multiple opportunities to do so, the Respondents have elected not to comply. The [Prehearing Statement] plainly states that ''testimony not disclosed in the prehearing statements or pursuant to subsequent rulings is likely to be excluded at the hearing.''

ALJ Ex. 29, at 2. Although the CALJ posited that Respondents' repeated failure to comply with his orders could constitute a waiver of a hearing request, the CALJ also noted that the Government ''does not seek (as it could have) the draconian remedy of hearing waiver, but asks for the lesser sanction of preemptive exclusion of a limited subset of the noticed evidence,'' and the CALJ deemed the Motion unopposed and granted it. *Id.* at 3–4. Specifically, the CALJ's Order precluded Respondents from offering the following:

1. ''testimony from sixty-nine patients identified as proposed witnesses;''
2. ''testimony from fifty-nine physicians identified as proposed witnesses;''
3. ''testimony from proposed witness Nina Ghobrial;''
4. ''evidence regarding the actions of DEA personnel and the cooperation of pharmacy staff during the Administrative Inspection of both pharmacies;''
5. ''evidence regarding the process the pharmacies used to verify prescriptions and resolve concerns, including a description and demonstration of the computer software utilized;''
6. ''evidence regarding the medical condition of patients who received early refills;''
7. ''evidence of the pharmacy's knowledge of cocktail prescription and duplicative drug therapy patients, their medical condition, and their treating physicians;''
8. ''evidence regarding circumstances surrounding an early fill for patient T.B.;''
9. ''evidence regarding circumstances surrounding an early fill for patient C.F.;''
10. ''evidence regarding information that Trinity I allegedly possessed relating to an early fill for patient J.K.;''
11. ''evidence regarding circumstances surrounding an early fill for patient G.S.;''
12. ''evidence regarding distances traveled by patients who either commuted, lived, or worked close to both pharmacies;'' and
13. ''evidence from the Respondents' proposed expert, Sam Badawi, regarding the lawful or unlawful nature of the numerous prescriptions referenced in each of the [Show Cause Orders].''

Id. at 3–4 (citing ALJ Ex. 28 at 4–18).

Over a month later, on December 7, 2015, Respondents filed their ''Motion for Reconsideration on Behalf of Respondents'' in which they ''request[ed] an order reconsidering [the CALJ's] order granting the Government's motion *in limine,* and allowing Respondents to provide [the CALJ] with the necessary evidence needed for [the] final determination.'' ALJ Ex. 32, at 1. Respondents stated that ''due process requires that Respondents be entitled to present testimony from its witnesses, which were properly disclosed.'' *Id.* at 3. Respondents also stated that they ''recognize that the physician and patient disclosures lack particularity'' because ''Respondents cannot exercise sufficient control over these witnesses without first having them under subpoena to provide more detail.'' *Id.* at 3 n.1. Respondents added that ''[n]either the Government nor the Respondents should fear the Court learning the full truth . . . even if there may not be a way for any party to control that message before the hearing.'' *Id.* Respondents also contended that ''those same deficiencies . . . do not apply'' to their employee, expert, and owner witness disclosures. *Id.* Indeed, Respondents argued that ''it is disingenuous for the Government to alleged [sic] that the [expert witness] disclosure fails to provide adequate notice to allow it to prepare for a cross-examination when its prehearing statements provide a comparable

opportunity for notice to Respondents.'' *Id* at 4–5. Respondents contend that their ''representatives and pharmacist'' witness disclosures were ''similarly robust and detailed,'' and that their ''remaining pharmacy employees['] [witness] disclosures are brief.'' *Id.* at 5. Finally, Respondents claim that ''an intermediate remedial order requiring supplementation or a limit to the testimony would have been more appropriate than granting the motion *in limine* in its entirety.'' *Id.*

The Government filed its ''Opposition to Respondents' Motion for Reconsideration'' on December 10, 2015. ALJ Ex. 33. In its Opposition, the Government argued that, as a threshold matter, ''Respondents have not even provided a basis—not to mention a plausible one that would demonstrate good cause—upon which to reconsider the decision.'' *Id.* at 4 (Respondents gave no ''explanation or justification for their failure to file a timely response on October 23, 2015.''). *Id.* ''Respondents['] Reconsideration Motion is a request for the ALJ to reconsider his decision on a Motion that they did not see fit to oppose in the first place, and have not seen/did not see fit [ ] to oppose for the past month.'' *Id.* In response to Respondents' concession that their patient and physician witness disclosures lacked particularity because they lacked subpoena authority, the Government contended that ''Respondents are unable to explain why they needed a subpoena to talk to their own customers and the physicians about prescriptions Respondents contend were lawfully issued. Nor do Respondents indicate that they attempted to contact these individuals and were rebuffed.'' *Id.* And finally, with respect to Respondents' Due Process argument, the Government noted that, ''despite hav[ing] been given multiple opportunities to correct their mistakes and provide the Government the requisite notice it was due,'' Respondents were attempting ''to shift the blame'' by ''now claiming that the ALJ is denying them a fair hearing.'' *Id.* at 4–5.

On December 10, 2015, the CALJ issued his ''Order Denying the Respondents' Motion for Reconsideration.'' ALJ Ex. 34. In this Order, the CALJ noted that Respondents ''filed neither a response to the Government's motion [in *Limine*] nor a motion for an extension of time to do so. Indeed, the Respondents filed nothing.'' *Id.* at 1. The CALJ also observed that he waited an additional 13 ''days after the responsive filing deadline'' before issuing his Order granting the Government's Motion *in Limine,* ''perhaps hoping in vain for even a late response.'' *Id.* Indeed, the CALJ emphasized that Respondents did not file their Motion for Reconsideration until ''over forty-five days from the date their motion response was due and less than a month prior to the . . . commencement of the hearing.'' *Id.* (Respondents ''do[ ] not even mention the fact that no response was filed, as if it never happened''). The CALJ noted that Respondents asked for another order to give Respondents additional opportunities to cure any alleged deficiencies in their disclosures ''[u]nder th[e] theory[ ] this new, additional order would somehow carry more force and would result in compliance where the other orders had failed. Enough.'' *Id.* at 2. The CALJ found that Respondents ''have tendered no explanation for their failure to answer the Government's motion and no basis upon which to base good cause for reconsideration, even if such relief was warranted—which it is not.'' *Id.* Accordingly, the CALJ denied Respondents' reconsideration motion. *Id.* at 3.[6]

The CALJ conducted an evidentiary hearing on January 4–8, 2016, in Arlington, Virginia, and on January 11–12, 2016, in Tampa, Florida. *See* Recommended Decision (R.D.), at 2. At the hearing, both parties elicited testimony from multiple witnesses, and the Government submitted various exhibits. Following the hearing, on February 26, 2016, both parties filed briefs containing their proposed findings of fact, conclusions of law, and argument. ALJ Exs. 40a, 41. On February 29, 2016, the CALJ issued an ''Order Regarding the Exhibit (and Appended Attachments) Included with the Government's Closing Brief'' noting that the Government's proposed findings of fact and conclusions of law had attached a declaration from the Government's lead attorney as well as six attachments thereto and asking Respondents if they intended ''to take a position on the Agency's consideration of factual matters set forth'' in the declaration and attachments. ALJ Ex. 40b, at 1. Respondents filed joint objections to the declaration and attachments. ALJ Ex. 40c. On March 4, 2016, the CALJ issued an Order sustaining Respondents' objections, ruling that the declaration and attachments are ''EXCLUDED from the record, and will not be considered as evidence in these matters'' and ''will not be considered by this tribunal in its recommended decision.'' ALJ Ex. 40d, at 1 & n.3.

On May 12, 2016, the CALJ issued and served his Recommended Decision. Specifically, the CALJ found that the Government had ''supplied sufficient evidence to make out a *prima facie* case that maintaining the Respondent's [DEA Registration] would be contrary to the requirements of 21 U.S.C. 823 and 824'' based on the third, fourth, and fifth charges set forth in the Show Cause Order. R.D. at 51. The CALJ further held that the testimony of the Government's expert was ''insufficiently reliable to establish a breach of the Respondent pharmacy's corresponding responsibility regarding the dispensing of controlled substances'' pursuant to 21 CFR 1306.04 as set forth in the first two charges of the Order. *Id.* at 43.[7] Although the CALJ acknowledged that his decision not ''to rely on the Government's expert witness dramatically pared down the number of noticed transgressions that could be and were established by a preponderance'' of the evidence, the CALJ concluded that ''the evidence demonstrates a culture in the Respondent pharmacy of ignoring regulations deemed inconvenient . . . this pharmacy is dangerous, and the owners have given not even the smallest indication to the Agency that there is any inclination to change.'' *Id.* at 53–54. The CALJ also concluded that the Respondent ''fail[ed] to accept responsibility.'' *Id.* at 54. Thus, the CALJ recommended that I revoke Respondent's registration and deny any pending applications for renewal. *Id.* On June 2, 2016, the Government and Respondents each filed Exceptions to the CALJ's Recommended Decision. Thereafter, the record was forwarded to me for final agency action.

Having considered the record in its entirety, including the parties' Exceptions (which I discuss throughout this decision), I do agree with the CALJ's conclusions that the Government sustained the Order's third, fourth and fifth charges. I also agree with the CALJ's conclusions that the Government failed to sustain the Order's second, sixth and seventh charges. And I further agree with his legal conclusion that Trinity II has failed to accept responsibility for the misconduct which has been proven on the record of the proceeding. However, I disagree with the CALJ's conclusion that the

[6] On December 11, 2015, the CALJ granted Respondents' requests for subpoenas for their pharmacy employees and denied Respondents' requests vis-à-vis their proposed practitioner witnesses pursuant to the Order granting the Government's Motion *in Limine.* ALJ Ex. 36.

[7] The CALJ also found that the Government failed to sustain the sixth and seventh charges of the Show Cause Order related to prescriptions filled by pharmacy interns. R.D. at 43–46.

Government did not prove the first charge of the Show Cause Order alleging that Trinity II violated its corresponding responsibility pursuant to 21 CFR 1306.04(a).[8] Accordingly, I agree with the ALJ's ultimate conclusion that Trinity II has committed acts which render its continued registration inconsistent with the public interest and will adopt his recommendation that I revoke Trinity II's registration and deny any pending applications. As the ultimate fact finder, I make the following findings of fact.

Findings of Fact

Trinity II is the holder of DEA Certificate of Registration FT0531586, pursuant to which it is authorized to dispense controlled substances in schedules II through V, as a retail pharmacy, at the registered location of 1474 Belcher Rd., Clearwater, Florida. Government Exhibit (''GX'') 34; Tr. 120, 685–86. Respondent's registration was due to expire on November 16, 2016, R.D. at 3; however, having reviewed the Agency's registration records, I take official notice that on October 3, 2016, Trinity II submitted a renewal application.[9] Because Trinity II has timely submitted a renewal application, I find that Trinity II's registration has remained in effect pending the issuance of this Decision and Final Order. *See* 5 U.S.C. 558(c). No evidence was put forward as to Trinity II's current licensure status with the Florida Department of Health.

The Investigation of Trinity II

On February 10, 2014, DEA Investigators (''DI'' or ''DIs'') conducted inspections of Trinity II. Tr. 119–20, 684–86, 709. The Government called three DIs as witnesses in its case-in-chief. *See id.* The lead investigator testified that when the DIs arrived at Trinity II for the inspection, they asked to speak to Trinity II's pharmacist-in-charge (''PIC'') or owner and were greeted by Mr. Mark Abdelmaseeh, who identified himself as Trinity II's PIC. *Id.* at 124–26. The DIs presented Trinity II's PIC with a Notice of Inspection, and the PIC consented to the inspection after reviewing the Notice. *Id.* at 126. The lead investigator also testified that the DIs obtained, by consent from Trinity II, photocopies of the driver's licenses of the employees present when the investigators arrived and the original prescriptions for the two-year period of February 2012 to February 2014. *Id.* at 127–32, 135–36.[10] Another DI separately testified that his role during the inspection included identifying employees at the pharmacy and obtaining copies of their drivers' licenses. *Id.* at 686–88, 694. He also spoke with some of Trinity II's employees to obtain their job descriptions. *Id.* at 688–89.

The lead investigator also testified that during the inspection at Trinity II, some employees represented to him that the pharmacy only dispensed controlled substances to patients with Florida addresses, that the pharmacist inspected each prescription for alteration or forgery, and that each physician's status was confirmed through the Florida Department of Health website. *Id.* at 577–78, 595–97. He also testified that someone at Trinity II claimed that its computer software ''automatically confirmed the prescriber's DEA registration.'' *Id.* at 578, 595–97. He further testified that the owners of the pharmacy, Mina and Emad Yousef, told him that they would call the doctor's office—a practice followed at Trinity I and Trinity II; however, the DI also testified that he did not recall either of them telling him that the owners called a doctor's office for every controlled substance prescription and exactly what they would discuss with the doctor. *Id.* at 126, 133, 579, 595–97, 666–67. He testified that the majority of prescriptions contained no evidence that anyone at Trinity II had called a doctor's office, and that neither the patient profiles nor the dispensing reports that he reviewed reflected such contacts. *Id.* at 666–68. He also testified that Yousef told him during the inspection that the pharmacist would check the patient profile for medication history. *Id.* at 597.

The lead investigator testified that he reviewed the original prescriptions and ''looked for the red flags of diversion that we had been trained on,'' such as distances, drug cocktails, drug interactions, and short fills. *Id.* at 147. He also reviewed them to make sure that the prescriptions included all of the required information such as the doctor's signature, patient name, patient address, and drug strength. *Id.* He then identified any prescriptions that were of interest and copied such prescriptions for review by the expert. *Id.* at 147–48, 538. He testified that the investigators did not make a forensic image of Trinity II's computer system. *Id* at 137.

In addition to the prescriptions obtained by DEA during the inspection of Trinity II, the DIs obtained dispensing reports[11] in May 2014 pursuant to a DEA administrative subpoena issued to Trinity II by facsimile. *Id.* at 156–57, 543 (''global dispensing report''), 544–45. The May 9, 2014 subpoena specifically asked for Trinity II to provide, for the time period of February 10, 2012 through February 10, 2014, ''[d]ispensing records of controlled substances in schedules II–V to include: Prescription number; patient's full name, date of birth, and address; drug name, strength, dosage form, quantity prescribed, and directions for use; prescriber's full name, address, and DEA number; method of payment; whether it is a new prescription or refill; and the pharmacist who filled [the] prescription.'' GX 95, at 4; Tr. 157–58, 201–02, 608. On May 21, 2014, counsel for Respondents Trinity I and Trinity II, Mr. Dale Sisco, emailed to the lead investigator Trinity II's response to the administrative subpoena, which included a Microsoft Excel spreadsheet of Trinity II's dispensing report (hereinafter, ''global dispensing report'') as an attachment to that email. GX 96; Tr. 158, 172–73, 175, 627, 643.[12] The DI testified that after receiving this global dispensing report, he created individual dispensing reports for individual patients to see the dispensing history for certain patients, and then he matched the original prescriptions with the dispensing report. Tr. 180–81, 219, 227.[13] He also noted that the global dispensing report included a ''Filled By'' column which either contained the initials ''EFY,'' ''MAG,'' or ''MIA.'' *Id.* at 271–72, 338, 344, 345.

On October 16, 2014, two DIs and Government counsel met with Trinity II's counsel, Mr. Sisco, and the co-owners of Trinity II—Emad Yousef and

[8] Although I do not rely on the Government expert's testimony in making my ruling, as set forth *infra,* I also disagree with the CALJ's conclusion that the Government's expert was not reliable.

[9] In accordance with the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979).

[10] The lead investigator also testified that during the inspection of Trinity II, DIs reviewed DEA–222 order forms and the CSOS electronic ordering system. Tr. 134. He testified that CSOS, which stands for Controlled Substance Ordering System, provides an electronic version of the DEA–222 order form. *Id.* at 134–35.

[11] Because witnesses and counsel used the phrases ''dispensing report'' and ''dispensing log'' interchangeably throughout the hearing, I also use those phrases interchangeably in this decision.

[12] Government Exhibit 84 is a printed copy of the global dispensing report entered into evidence. Tr. 177–79.

[13] The lead investigator also testified that when he created the individual dispensing reports, using the global dispensing report, he did not alter any of the information in the global dispensing report, and that the individual dispensing reports are true and accurate representations of the information contained in the global dispensing report. *Id.* at 241, 247–48, 253, 256, 259, 264, 268, 278, 285, 291–92, 297, 303–04, 348–49.

Mina Yousef [14]—at Mr. Sisco's office. *Id.* at 186–88. The purpose of the meeting was to ask the Yousefs about information contained on the fill stickers of the prescriptions. *Id.* at 188–89. Emad Yousef was asked what ''MAG'' stood for, and the lead investigator testified that Yousef responded that it stood for Mina Ghobrial, a pharmacist intern at Trinity II. *Id.* at 339, 446–47. The DI testified that he conducted a license verification on Florida's Department of Health license verification website and learned that Mina Ghobrial is a pharmacist intern in Florida. *Id.* at 339, 444. Another DI testified that he also conducted the same license verification search on August 20, 2015 that confirmed Mr. Ghobrial's status as a licensed pharmacy intern. *Id.* at 711; GX 78. The lead investigator also testified that ''EFY'' are the initials for Emad Yousef, and ''MIA'' are the initials for pharmacist Mark Abdelmaseeh. Tr. 271–72, 338, 345.

On December 4, 2014, the lead investigator issued an administrative subpoena to Trinity II asking that the pharmacy ''provide a copy of the complete patient profile your pharmacy maintained pursuant to Florida Administrative Rule 64B16–27.800 ('Requirement for Patient Records')'' for 23 specific patients. GX 98, at 2; Tr. 159, 548–49. The CALJ took official notice of the version of this Rule applicable between February 2012 and February 2014. ALJ Ex. 38. The Florida Board of Pharmacy adopted the Florida Administrative Rules pursuant to its authority under Chapters 465.022 and 465.0155 of the Florida Statutes. This Rule requires ''all pharmacies'' to ''maintain[ ]'' ''[a] patient record system . . . for patients to whom new or refill prescriptions are dispensed'' that ''shall provide for the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed drugs at the time a new or refill prescription is presented for dispensing.'' ALJ Ex. 38, at 1 (Rule 64B16–27.800(1)). The Rule also states that the ''pharmacist shall ensure that a reasonable effort is made to obtain, record and maintain'' certain patient-related information, including ''[p]harmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.'' *Id.* (Rule 64B16–27.800(1)(f)). This Rule further requires the pharmacist to ''record any related information indicated by a licensed health care practitioner.'' *Id.* (Rule 64B16–27.800(2)). Finally, this Rule requires pharmacists to maintain ''[a] patient record for a period of not less than two years from the date of the last entry in the profile record'' in ''hard copy or a computerized form.'' *Id.* (Rule 64B16–27.800(3)).

The lead investigator testified that he requested the patient profiles because ''another place to resolve red flags, from my training and experience, was in the patient profiles,'' and ''a lot of pharmacists, instead of writing it on the prescription, they will actually type it into a note section in the patient profile in the computer.'' Tr. 182, 572–73. He further testified that the patient profile is generally ''part of the pharmacy's electronic system, where it will list out the prescriptions that the individual patient has received. It also contains note sections and other information regarding the patient.'' *Id.* at 159. On December 22, 2014, Mr. Sisco sent an email to the lead investigator stating that ''[e]nclosed please find documents responsive to the referenced subpoena.'' GX 98, at 1. Attached to this email were patient profiles stored in portable document format (''PDF''). *Id.;* Tr. 159–60, 175, 182–83.

The lead investigator testified that he reviewed all the prescriptions, dispensing reports, and patient records obtained from Trinity II and received from its counsel. Tr. 183–84, 241, 247–48, 253–54, 256, 259, 264, 268, 278, 285, 291, 297, 303, 572–73, 666–67. He testified that none of the patient records received in response to the December 4, 2014 administrative subpoena contained a ''notes and comment section'' or documentation of contact with a doctor's office. *Id.* at 183–84, 667–68. He also testified that the majority of the prescriptions did not contain evidence that a doctor's office had been called. *Id.* at 666–67.

Finally, he testified that he created Google Maps printouts to show certain patient's travel. *Id.* at 238. Specifically, he testified that when he created these maps, he would use the patient's home address as the starting point, the physician's address as the next stop, the pharmacy as the stop after that, and sometimes the patient's home address as the final stop. *Id.* at 237. The CALJ found that the testimony of each of the DIs called by the Government ''was sufficiently detailed, plausible, consistent and cogent to be fully credited in this recommended decision.'' R.D. at 14.

The Allegations of Dispensing Violations

The lead investigator testified that DEA investigators provided the following information to Professor Paul Doering, M.S., the Expert for the Government: (1) Copies of the original prescriptions for certain patients flagged by the lead investigator, (2) a copy of all of the E–FORCSE [15] data for the Respondent from February 2012 to February 2014, (3) the aforementioned individualized dispensing reports prepared by the lead investigator, (4) a copy of one of his DEA–6 [16] forms, (5) the subpoenaed patients' profiles, and (6) maps for certain patients. Tr. 581, 589–90, 597–98, 601–02. Professor Doering testified that he also received an electronic copy of the ''master dispensing report'' for Trinity II. *Id.* at 861. He further testified that he relied on the following materials in forming his opinion in this case: ''the dispensing logs, the copies of the individual prescriptions, the patient profiles, and what could best be called as Google Maps and/or MapQuest indicators of distances between two spots.'' *Id.* at 863.

Professor Doering was retained by the Government to be its Expert and was tendered as such at the hearing. Tr. 147, 834. Professor Doering has taught the practice of pharmacy in Florida for 40 years and at one time also worked in a retail pharmacy. *Id.* at 812–13, 824, 830–31; GX 32. His teaching has included courses related to the standards of pharmacy practice in the State of Florida. Tr. 814–15. He has also conducted research and published extensively regarding the standards of pharmacy practice in Florida. *Id.* at 816–17; GX 32. Professor Doering was also the one professor to have ever been given the honorary title of Distinguished Service Professor Emeritus in the 95-year history of the University of Florida's School of Pharmacy, a status he received in 2011.[17] Tr. 811–12.

[14] The lead investigator testified that, during the inspection of Trinity II, he spoke with Emad Yousef, and that Yousef had stated that he and his brother, Mina Yousef, were co-owners of Trinity I and Trinity II. Tr. 128, 133.

[15] E–FORCSE stands for ''Electronic-Florida Online Reporting of Controlled Substances Evaluation'' and is the prescription drug monitoring program in Florida. Tr. 553, 857.

[16] A DEA–6 is the form where DIs write their report of an investigation. Tr. 582. Pursuant to 21 CFR 1316.46(b)(4), the information contained in investigatory reports are not available for inspection as part of the administrative record. Thus, the CALJ properly precluded Respondents' counsel from asking the agent on cross-examination to reveal the contents of his DEA–6. Tr. 583 (''He can't be compelled to answer or reveal anything that's in his DEA–6.''), 584 (''he can't be compelled to discuss the investigative contents of the DEA–6'').

[17] According to his CV, he was ''[a]warded 'Emeritus' status upon official retirement on January 31, 2011. Despite retirement, [he] continues to teach the same course as before retirement, except on a volunteer basis. [He e]ngages in special

Professor Doering testified that he keeps current on the latest developments in pharmacy practice. *Id.* at 817.

At the hearing, the CALJ accepted Professor Doering as an expert in the practice of pharmacy in the State of Florida and in the standard of care for pharmacists in the dispensing of controlled substances in Florida. *Id.* at 843–844. In his Recommended Decision, the CALJ also stated that Professor Doering ''has decades of experience in academia with honors and numerous publications'' and that ''[h]is credentials are extremely impressive, and the pride and commitment he displayed toward the field of pharmacy were undeniable and palpable in his testimony.'' R.D. at 14.

In that capacity, Professor Doering testified that he sought to ''identify[ ] individual patients that might demonstrate some of the activities and issues that have come to be called red flags'' or ''indicators.'' *Id.* at 864. In his opinion, a red flag is ''anything that raises concern.'' *Id.* ''In the area of pharmacy it's a term that's come to be used to give examples to pharmacies of things that might indicate or suggest that prescriptions were filled outside the usual course of pharmacy practice.'' *Id.* He also testified that a red flag ''could be indicative of abuse or misuse,'' ''over or under compliance,'' ''drug-drug interactions,'' or a ''forged'' or ''altered'' prescription. *Id.* at 869. He further testified that these issues would be reviewed and resolved by a pharmacist ''before filling any prescription'' as part of the ''prospective drug utilization review, or prospective drug use review.'' *See id.* Resolution of red flags, he continued, ''would be documented on the face of the prescription, on the rear of the prescription, or in the patient profile.'' *Id.* at 882. Professor Doering testified that the standard of practice in Florida regarding the contents of such documentation is that it has to include ''a reason that makes sense that, to the average pharmacist, is understandable how a person could find themselves in that predicament,'' and the standard of practice also requires documentation of ''potentially reasonable removals of red flags'' and some link back to the prescribing physician. *Id.* at 1169–70. He further testified that ''if it's not written down[,] you didn't do it.'' *Id.* at 1353.

Professor Doering testified that the standard of care for a prospective drug utilization review (also referred to as a prospective drug use review) is already ''specified in the Florida Administrative Code,'' which requires pharmacists to perform a prospective drug utilization review before dispensing a medication. *Id.* at 869–70 (''It says, pharmacists shall, before dispensing a medication, perform what [is] called . . . prospective drug utilization review.''), 958–59 (''it's crystal clear what it says, the pharmacist shall before dispensing any prescription do a drug utilization review''). The CALJ took official notice of (and entered into evidence) the applicable version of Florida Administrative Code Rule 64B16–27.810, entitled ''Prospective Drug Use Review,'' which states that ''[a] pharmacist shall review the patient record and each new and refill prescription presented for dispensing in order to promote therapeutic appropriateness by identifying: (a) Over-utilization [ ]; (b) Therapeutic duplication; . . . (d) Drug-drug interactions; (e) Incorrect drug dosage or duration of drug treatment; . . . (g) Clinical abuse/misuse.'' ALJ Ex. 38 (Fla. Admin. Code Rule 64B16–27.810(1)); Tr. 946, 1852. This Rule also states that, ''[u]pon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the potential problems which shall, if necessary, include consultation with the prescriber.'' *Id.* (Fla. Admin. Code Rule 64B16–27.810(2)). This prospective drug use review, according to Professor Doering, applies to all prescription drugs, including prescriptions for controlled substances and narcotics.[18] *See* Tr. 870.

Professor Doering testified that the drug utilization review process ''begins when the prescription is presented'' and should be ''performed at the time the information is given to the pharmacist.'' *Id.* at 873. He also stated that the standard of care in Florida requires pharmacists to use the notes and comments fields in a patient profile to document the resolution of issues identified during the drug utilization review process. *Id.* at 1015–16. In the absence of notes resolving such issues in the patient profile, Professor Doering testified that he would also look to the front and back of the prescription to determine whether a pharmacist had resolved a red flag. *Id.* at 1055, 1101. He further testified that he did not find any notes and comments section in any of the patient profiles he reviewed.[19] *Id.* at 1054, 2087.

Professor Doering testified that only after the pharmacist has identified, resolved, and documented his/her resolution of red flags of diversion and other issues identified during the drug utilization review process can the pharmacist fill the prescription. *Id.* at 873–74, 1093–94, 1099–1100. If the pharmacist cannot resolve the issue, then the standard of care calls for pharmacists not to fill the prescription. *E.g., id.* at 879.

Professor Doering also explained some specific issues, or red flags, that pharmacists must look for as part of the prospective drug review process pursuant to Rule 64B16–27.810. For instance, he testified that the term ''over-utilization'' in this Rule is a red flag, and he explained that it ''can be two things. So it can be taking more of the medication at a single administration. Or it could be obtaining more medication than the physician had desired, and using it in a time span that is less than the medication was supposed to last.'' ALJ Ex. 38 (Fla. Admin. Code Rule 64B16–27.810(1)(a)); Tr. 872, 876. He offered the following example: ''So if it's a 30-day supply of medicine, having lasted only 15 days is suggestive of one of two things. One, is taking too much of it. Or two, might be distributing it to other persons. That would be over[-] utilization.'' *Id.* at 872. He testified that when a pharmacist identifies an over-utilization issue when a patient presents a prescription, the pharmacist must resolve that issue (and document that resolution) before filling the prescription. *Id.* at 873–74, 879.

Professor Doering also explained that the term ''therapeutic duplication,'' as set forth in Rule 64B16–27.810(1)(b), ''is the presenting of two prescriptions, either for the identical drug, or drugs that are so closely allied that they would be overlapping in their actions in the body.'' *Id.* at 884–85, 1520 (therapeutic duplication'' occurs when ''two drugs with the same action [are] being prescribed under the same circumstances''), 1541 (''Essentially two drugs with the same net effect.''). ''[F]rom a pharmacist's standpoint, [that] is duplication of therapy.'' *Id.* at 885. Professor Doering testified that therapeutic duplication is a red flag. *Id.* at 886. ''Therapeutic duplication signifies that there are two or more

projects for the College of Pharmacy, Shands Hospital, and other agencies and organizations.'' GX 32, at 1.

[18] Professor Doering testified that ''[n]arcotics prescriptions . . . are referred to as high alert medications'' that ''have a higher than ordinary potential to cause harm if used inappropriately.'' Tr. 865, 867–68.

[19] Professor Doering testified that he also reviewed dispensing logs, which are typically ''spreadsheet[s] that contain[ ] information regarding drugs that were dispensed by the pharmacy,'' and that the data in the dispensing log should ''correspond'' to the patient profile's data. Tr. 1018–19.

drugs that appear to be essentially doing the same thing, that together might pose the issue of adverse drug-drug interactions.'' *Id.* at 883; *see* ALJ Ex. 38 (Fla. Admin. Code Rule 64B16–27.810(1)(b), (d)). ''[I]t also may involve intentional duplication of drugs.'' Tr. 883. In this way, he added that a prescription raising a ''therapeutic duplication'' concern might lead to another issue for the pharmacist to resolve regarding drug-drug interactions. *Id.* at 883–84. As a result, Professor Doering stated that therapeutic duplication raises many concerns, including the ''safety of the patient. But it could also indicate an attempt to obtain more medication for over[-]utilization, which touches upon some of the other issues, which means clinical use or abuse, or diversion to some other use.'' *Id.* at 885–86. As with other red flags, he reiterated that the standard of care requires pharmacists receiving a prescription raising the red flag of therapeutic duplication to resolve that issue (and document such resolution) before filling the prescription. *Id.* at 886–91.

Professor Doering next explained the term ''[d]rug-drug interactions.'' ALJ Ex. 38 (Fla. Admin. Code Rule 64B16–27.810(1)(d)). He testified that this ''refers to the fact that two drugs, when given together, can have outcomes that are not what was intended initially by either one or the other drug together.'' Tr. 893. He testified that when presented with prescriptions presenting potentially harmful drug-drug interactions, the standard of care requires the pharmacist to either (1) resolve this red flag and document the resolution once the pharmacist is satisfied that it is in the best interest of the patient, or (2) not fill the prescriptions. *Id.* at 1419–20.

Professor Doering also testified, however, that drug cocktails that include an opioid, benzodiazepine, and a muscle relaxer present red flags that must be resolved. *See, e.g., id.* at 1413–16, 1427. ''[F]or example, oxycodone, or some other potent narcotic, along with a tranquilizer drug, such as alprazolam or Xanax, combined with a muscle relaxant, say for example, Soma,'' also known as carisoprodol. *Id.* at 894. ''[T]hose three drugs, which have been come to be called the unholy trinity, or . . . cocktail prescriptions, whatever you want to call them, are symbolic of drug interactions that might cause harms to the patient.'' *Id.; see also id.* at 1416–17. According to Professor Doering's testimony, these drugs ''have added central nervous system depressant properties and can present a real and present danger to the patient.'' *Id.* at 1417. Moreover, he testified that this combination of drugs ''constitute what I would call drugs with abuse potential, serious abuse potential'' and ''are often diverted to non-medical or recreational use.'' *Id.* at 1416.[20] During the prospective drug utilization review process, pharmacists, ''check for drug/drug interactions. And this would be subject to, in my opinion, very severe drug/drug interactions.'' *Id.* at 1418.

Professor Doering testified to what a pharmacist would look for in identifying ''[c]linical abuse/misuse'' as part of the prospective drug use review. ALJ Ex. 38 (Fla. Admin. Code Rule 64B16–27.810(1)(g)). He defined clinical abuse or misuse as ''recreational use'' or ''drug abuse'' which ''typically involves taking more of the prescribed drug or focusing on certain drugs that have [ ] mood altering properties . . . that individuals . . . will use for other than medical purposes.'' Tr. 952, 953 (it is ''any time you use the drug outside the conditions for which it could be prescribed''). To identify such clinical abuse/misuse as part of the drug utilization review process, Professor Doering testified that a pharmacist ''would look for quantities of drugs that are being sought beyond those which were authorized by the prescriber or they might look for certain combinations of drugs that are known to be used frequently for non-medical reasons.'' *Id.* at 953. Again, as with the other red flags that may arise during a prospective drug use review (*i.e.,* the drug utilization review process), if the pharmacist cannot resolve the clinical abuse/misuse red flag, then he or she must not fill the prescription. *Id.*at 955.

Professor Doering also offered testimony regarding patient address information that appears on a prescription and the distance a patient travels to a pharmacy to fill a prescription. He testified that both Florida and federal law require a patient's address to appear on prescriptions ''so that the pharmacist has some idea of where this patient resides and that can be useful for a couple of different reasons . . . it's also useful to know what geographic area this patient lives in because that may become important information as the prospective drug use review takes place.'' *Id.* at 973. In the same vein, he testified that a physician's address must also appear on the prescription to indicate where the patient met with the practitioner. *Id.* at 970. ''Typically you would look to patients that are in the same geographic area [as the pharmacy]. I would say within the same county or geographic area.'' *Id.* at 1692. ''[W]hen the distances are very great, it raises . . . a question of why is somebody needing to travel this far to get this prescription filled.'' *Id.*

Professor Doering also explained what type of information is generated after a pharmacist has decided to fill a prescription. ''When the computer prints out the information there are different versions of the [fill sticker]. One version of it doesn't contain necessarily all this information, but that's the one that gets applied to the prescription vial. Th[e other version] is the one for pharmacists' record keeping purposes. It has additional info that the one on the vial does not.'' *Id.* at 978.

Significantly, he testified that the fill sticker is generated after the drug utilization review process has been completed, and that the date appearing on the fill sticker represents the date when the pharmacy filled the prescription. *Id.* at 979–80. He explained that the fill sticker is ''generated one step before the prescription label is actually applied to the vial . . . by the pharmacist. The significance of that is that the prescription has gone through all the proper steps and its certified ready for dispensing to the patient.'' *Id.* at 979. Professor Doering further testified that, in his opinion, the date on the fill sticker also represents when the prescription is dispensed. *Id.* at 1186.

Respondents did not proffer an expert witness at the hearing, and I find that Professor Doering's testimony was credible.[21]

The Prescription Evidence

At the hearing, the Government introduced into evidence copies of dispensing logs, patient profiles, and the front and back of prescriptions for controlled substances which it alleged Trinity II filled in violation of 21 CFR 1306.04(a) and 1306.06 because they presented red flags of diversion that Trinity II failed to resolve as set forth in the first two charges of the Show Cause Order. As already noted, the first charge of the Show Cause Order outlined six different categories of red flags of diversion that the Government alleged

[20] He also testified that ''[t]he nature of the drug combination, a potent narcotic analgesic, along with a potent anxiolytic medicine, along with a potent muscle relaxant . . . It's just come to be associated with a high potential for abuse.'' Tr. 1417.

[21] Although the CALJ expressly declined to offer a view of Professor Doering's credibility, he nonetheless disregarded his opinions as ''insufficiently reliable to form the basis of a sanction under the APA.'' R.D., at 33 (''To be clear, however, this is not an issue of credibility, and no credibility determination is entered here.''). As I discuss *infra,* I disagree with the CALJ's assessment of the expert's reliability.

that Trinity II failed to resolve before filling the pertinent prescriptions. When taken together, the Government alleged that Trinity II's failure to resolve these red flags before filling these prescriptions demonstrated that Trinity II knowingly filled prescriptions for controlled substances in contravention of its corresponding responsibility and outside the usual course of pharmacy practice.

Early Fills

The Government introduced prescription evidence to show that Trinity II failed to resolve the first alleged red flag of diversion, ''early fills,'' with respect to at least four of its customers identified in the first charge of the Show Cause Order and whose patient records the Government had requested pursuant to its December 4, 2014 subpoena.[22] For one such customer, J.T., the Government introduced a dispensing log, patient profile, and the front and back of prescriptions to establish that Trinity II filled early at least nine prescriptions issued to J.T. for oxycodone 30 milligrams (hereinafter, ''mg''), a schedule II controlled substance, under the brand name Roxicodone. GX 35; Tr. 1198–1234. Specifically, the Government introduced evidence that on February 23, 2012, Trinity II filled a prescription issued by physician W.F. to customer J.T. for 336 pills of ''Roxicodone 30 mg,'' and with directions from the prescribing physician for J.T. to take up to eight pills per day. GX 35, at 1, 3, 10, 11; Tr. 1199–1202. Although the fill sticker and patient profile both state that the prescription was for a 30-day supply, in fact, the 336 pills prescribed to be taken at the rate of eight pills per day constitutes a 42-day supply that should have lasted J.T. until at least April 6, 2012. *Id.* Nevertheless, on March 22, 2012, Trinity II then filled another prescription (from the same prescriber) for another 336 pills of Roxicodone 30 mg with instructions to take up to eight pills per day. GX 35, at 1, 3, 16, 17; Tr. 1202–05. Thus, I find that when Trinity II filled this second prescription on March 22, 2012, Trinity II filled it 15 days early. *Accord* Tr. 1205.[23] I also find that the front of the prescription, the back of the prescription bearing the fill sticker, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled the prescription early. GX 35, at 1, 3, 15, 16; Tr. 1198, 1199, 1205–06.

Professor Doering testified that, in Florida, whereas a fill (or refill) that is 2–3 days early may not signify a problem, a fill that is more than two-to-three days early is a red flag that a pharmacist is expected to resolve during the drug utilization review process ''to avoid overuse or misuse.'' *See* Tr. 989–91, 1009. ''If someone is coming back fifteen days early, then that signifies a problem.'' *Id.* at 990. In the case of J.T.'s presentation of the aforementioned March 22, 2012 Roxicodone 30 mg prescription 15 days early, the evidence established that there are no notes or comments—much less any evidence that Trinity II resolved this red flag—reflected in J.T.'s patient profile, dispensing log, or the front-and-back of this prescription. GX 35, at 1, 3, 15, 16; Tr. 1198–99, 1205–06. As a result, Professor Doering testified that this prescription was inconsistent with Florida's standard of care, not filled in the usual course of professional practice, nor filled in the proper exercise of the pharmacist's corresponding responsibility. *Id.* at 1206.

In each of the next eight months, J.T. presented prescriptions to Trinity II for Roxicodone 30 mg in the same quantities and with the same dosing instructions; and in each instance, I find that Trinity II filled those prescriptions 14, 15, or 16 days early. GX 35, at 1, 3, 16, 17, 20, 21; Tr. 1208–09 (prescription for 42-day supply that Trinity II filled 15 days early on April 19, 2012); GX 35, at 1, 3, 20, 21, 30, 31; Tr. 1209–12 (prescription for 42-day supply that Trinity II filled 15 days early on May 17, 2012); GX 35, at 1, 3, 30, 31, 36, 37; Tr. 1213–17 (prescription for 42-day supply that Trinity II filled 15 days early on June 14, 2012); GX 35, at 1, 3, 36, 37, 44, 45; Tr. 1220–23 (prescription for 42-day supply that Trinity II filled 15 days early on July 12, 2012); GX 35, at 1, 3, 44, 45, 50, 51; Tr. 1223–25 (prescription for 42-day supply that Trinity II filled 16 days early on August 8, 2012); GX 35, at 1, 3, 50, 51, 54, 55; Tr. 1225–28 (prescription for 42-day supply that Trinity II filled 14 days early on September 6, 2012); GX 35, at 1, 3, 54, 55, 62, 63; Tr. 1228–31 (prescription for 42-day supply that Trinity II filled 16 days early on October 3, 2012); GX 35, at 1, 3, 62, 63, 70, 71; Tr. 1231–34 (prescription for 42-day supply that Trinity II filled 14 days early on November 1, 2012). When considering the cumulative effect of these consecutive monthly early fills from March–November 2012, I find that Trinity II filled prescriptions for J.T. that resulted in the filling of 135 days of extra oxycodone 30 mg.

And as with the earlier prescription that Trinity II filled for J.T. on March 22, 2012, I find that the prescriptions (front or back), patient profile, and dispensing log do not reflect any notes or comments, much less documentation, explaining how Trinity II resolved the early refill red flag presented by these prescriptions over the eight subsequent months. *See* GX 35, at 1, 3, 16, 17, 20, 21, 30, 31, 36, 37, 44, 45, 50, 51, 54, 55, 62, 63, 70, 71; Tr. 1198–99, 1205–06, 1212, 1216, 1218, 1222, 1225, 1228, 1230, 1234. And in each instance, Professor Doering testified that, because all of these early fills were well beyond 3 days early, Trinity II should have identified these early fills as red flags during the drug utilization review process to avoid drug abuse, overuse or misuse. Tr. 1208–09, 1211–12, 1215–17, 1222–25, 1227–28, 1230–31, 1234. He further testified that Trinity II's decision to fill these prescriptions without resolving these red flags was inconsistent with Florida's standard of care, not in the usual course of professional practice, and did not reflect the proper exercise of the pharmacist's corresponding responsibility. *Id.*

For a second customer, M.A., the Government introduced a dispensing log, patient profile, and the front and back of prescriptions to establish that Trinity II filled early at least 8 prescriptions issued to M.A. for hydromorphone 8 mg, a schedule II controlled substance, under the brand name Dilaudid. GX 36; Tr. 1237–68. The Government introduced evidence that on May 2, 2013, Trinity II filled a prescription issued by physician R.A. at the Genesis Medical Clinic to customer M.A. for 165 pills of ''Dilaudid Oral Tablet 8 MG,'' with directions from the prescribing physician for M.A. to ''[t]ake one tablet every 5 to 6 hours for 30 days.'' GX 36, at 1–2, 4–5; Tr. 1237–42. Although the prescription and the fill sticker both stated that the prescription was for a 30-day supply, in fact, the 165 pills prescribed to be taken at the rate

[22] For reasons I discuss *infra,* and as it relates to the first and second charges of the Show Cause Order only, I limit my fact findings to evidence related to those patients discussed at the hearing who were also identified in the December 4, 2014 subpoena.

[23] Notably, the CALJ failed to make recommended fact findings related to the alleged early fills, or most of the other allegations set forth in paragraphs 7–8 of the Show Cause Order (*i.e.,* the first two charges of the Order) because of his concerns related to Professor Doering's reliability as an expert. R.D., at 43. However, as discussed further *infra,* this concern, even if well-founded, does not categorically relieve the Agency from making fact findings on allegations about Trinity II's filling conduct that can be decided without expert opinion. Accordingly, I will make such ultimate fact findings, even where the CALJ chose not to recommend any.

of five pills[24] per day constitutes a 33-day supply that should have lasted M.A. until at least June 4, 2013. *Id.* Nevertheless, on May 28, 2013, Trinity II then filled another prescription (from another prescriber, J.S., at the same practice group—Genesis Medical Clinic) for another 165 pills of Dilaudid 8 mg with instructions to take one tablet every five to six hours for 30 days. GX 36, at 1–2, 4–7; Tr. 1242–45. Thus, I find that when Trinity II filled this second prescription on May 28, 2013, Trinity II filled it seven days early. I also find that the front of the prescription, the back of the prescription bearing the fill sticker, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled the prescription early. GX 36, at 1–2, 6–7; Tr. 1236, 1237, 1245.

In each of the next seven months, M.A. presented to Trinity II prescriptions from the same Genesis Medical Clinic for Dilaudid 8 mg in the same quantities and with the same dosing instructions; and in each instance, I find that Trinity II filled those prescriptions six days early. GX 36, at 1–2, 6–9; Tr. 1245–49 (prescription for 33-day supply that Trinity II filled six days early on June 25, 2013); GX 36, at 1–2, 8–10; Tr. 1249–51 (prescription for 33-day supply that Trinity II filled six days early on July 23, 2013); GX 36, at 1–2, 10–11; Tr. 1251–54 (prescription for 33-day supply that Trinity II filled six days early on August 20, 2013); GX 36, at 1–2, 11, 13–14; Tr. 1254–55 (prescription for 33-day supply that Trinity II filled six days early on September 17, 2013); GX 36, at 1–3, 13–16; Tr. 1256–58 (prescription for 33-day supply that Trinity II filled six days early on October 15, 2013); GX 36, at 1, 3, 15–18; Tr. 1259–61 (prescription for 33-day supply that Trinity II filled six days early on November 12, 2013); GX 36, at 1, 3, 17–20; Tr. 1262–64 (prescription for 33-day supply that Trinity II filled six days early on December 10, 2013). When considering the cumulative effect of these consecutive monthly early fills from May 2013 to December 2013, I find that Trinity II filled prescriptions for M.A. that resulted in the filling of 50 days of extra hydromorphone 8 mg.

As with the earlier prescription that Trinity II filled for M.A. on May 28, 2013, I find that the prescriptions (front or back), patient profile, and dispensing log do not reflect any notes or comments, much less documentation, explaining how Trinity II resolved these early refill red flags over the seven subsequent months. *See* GX 36, at 1–3, 4–11, 13–20; Tr. 1236–37, 1245, 1248, 1251, 1253, 1255, 1258, 1261, 1263. Professor Doering testified that, because all of these early fills were well beyond three days early, Trinity II should have identified these early fills as red flags during the drug utilization review process to avoid drug abuse, overuse or misuse. Tr. 1240–41, 1245, 1248–49, 1251, 1253–54, 1255, 1256, 1258, 1261, 1263–64. He further testified that Trinity II's decision to fill these prescriptions without resolving these red flags was inconsistent with Florida's standard of care, not in the usual course of professional practice, and did not reflect the proper exercise of the pharmacist's corresponding responsibility. *Id.*

For a third customer, J.G., the Government introduced a dispensing log, patient profile, and the front and back of prescriptions to establish that Trinity II filled early or refilled early prescriptions issued to J.G. at least seven times—one time for a prescription of lorazepam 2 mg, and six times for prescriptions of alprazolam 2 mg, both of which are schedule IV controlled substances. GX 39; Tr. 1364–84. Regarding the lorazepam prescription, the Government introduced evidence that on May 29, 2012, Trinity II filled a prescription issued by physician G.C. to customer J.G. for 30 pills of lorazepam 2 mg, and with directions from the prescribing physician for J.G. to ''[t]ake ½ [one-half of one] tablet(s) . . ., 2 times per day, for 30 days.'' GX 39, at 1–2, 4; Tr. 1365–66. Hence, the 30 pills prescribed to be taken at the rate of one pill per day constitute a 30-day supply that should have lasted J.G. until at least June 28, 2012. *Id.* Nevertheless, on June 19, 2012, Trinity II then filled another prescription from the same prescribing physician for another 30 pills of lorazepam 2 mg with the same instructions—one pill per day. GX 39, at 1–2, 4–5; Tr. 1366–70. Thus, I find that when Trinity II filled this second prescription on June 19, 2012, Trinity II filled it nine days early. *Accord* Tr. 1367. I also find that the front of the prescription, the back of the prescription bearing the fill sticker, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled the prescription early. GX 39, at 1–2, 5; Tr. 1364–65, 1369.

With respect to the alprazolam prescriptions for J.G., the Government introduced evidence that on September 18, 2012, Trinity II filled a prescription issued by physician G.C. to customer J.G. for 30 pills of Xanax 2 mg, which is the brand name for alprazolam 2 mg, that could be refilled twice and with directions from the prescribing physician for J.G. to ''[t]ake ½ [one-half of one] tablet(s) . . ., 2 times per day, for 30 days, as needed for anxiety.'' GX 39, at 1–2, 6; Tr. 1370–71. Hence, the 30 pills prescribed to be taken at the rate of one pill per day constitute a 30-day supply that should have lasted J.G. until at least October 18, 2012 (assuming J.G. needed to take it every day for 30 days). *Id.* Nevertheless, the dispensing log and patient profile show that on October 10, 2012, Trinity II then refilled the prescription for another 30 pills of alprazolam 2 mg. GX 39, at 1–2, 6; Tr. 1371–73. Thus, I find that when Trinity II refilled this prescription on October 10, 2012, Trinity II refilled it eight days early. *Accord* Tr. 1372. The dispensing log and patient profile also establish that on October 29, 2012, Trinity II refilled the prescription again for another 30 pills of alprazolam 2 mg. GX 39, at 1–2, 6; Tr. 1373. Thus, I find that when Trinity II refilled this prescription on October 29, 2012, Trinity II refilled it 10 days early because the earlier refill should have lasted until November 8, 2012. *Accord* Tr. 1374. I also find that the front of the original prescription, the back of the original prescription bearing the fill sticker, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II refilled the prescription early on October 10 and October 29, 2012. GX 39, at 1–2, 6; Tr. 1373.

On February 26, 2013, Trinity II filled another prescription issued by physician G.C. to customer J.G. for 30 pills of alprazolam 2 mg (a 30-day supply), even though the dispensing log and J.G.'s patient profile show that Trinity II had already filled a 30-day supply of alprazolam 2 mg for J.G. on February 14, 2013.[25] GX 39, at 1–2, 8–9; Tr. 1375–77. I find that when Trinity II filled the February 26, 2013 prescription, Trinity II filled it at least 17 days early because the February 14, 2013 refill should have lasted J.G. until at least March 15, 2013. *Accord* Tr. 1377. Over the next two months, Trinity II then refilled this prescription twice (on March 18, 2013 and on April 12,

[24] If M.A. took the tablets every six hours as instructed, then the daily tablet dosage would be four tablets/day; if M.A. took the tablets every five hours as alternatively instructed, then the daily dosage would be 4.8 tablets per day. *Accord* Tr. 1239–40. For purposes of this early fill fact-finding, I will round up to and use the rate of five tablets/day—a calculation that offers Trinity II the greatest lenity for purposes of calculating an early fill.

[25] The February 14, 2013 filling by Trinity II was the second refill of a December 18, 2012 prescription (also issued by physician G.C.) that J.G. had filled at Trinity II on December 18, 2012. *See* GX 39, at 1–2, 8.

2013), and in each instance I find that Trinity II refilled it 10 and five days early, respectively. GX 39, at 1–2, 9; Tr. 1377–79 (prescription for 30-day supply that Trinity II filled 10 days early on March 18, 2013); GX 39, at 1–2; Tr. 1377–79 (prescription for 30-day supply that Trinity II filled five days early on April 12, 2013). I find that the front of the original prescription, the back of the original prescription bearing the fill sticker, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled the February 26, 2013 prescription early, and twice refilled that prescription early on March 18 and April 12, 2013. GX 39, at 1–2, 8–9; Tr. 1373, 1379.

In addition, even though Trinity II filled a new prescription for a 30-day supply of alprazolam 2 mg issued by physician G.C. to J.G. on May 14, 2013 that should have lasted J.G. until at least June 12, 2013, Trinity II refilled this prescription with another 30-day supply of alprazolam 2 mg on June 6, 2013. GX 39, at 1, 3, 10; Tr. 1380–83. Thus, I find that the June 6, 2013 refill by Trinity II was six days early. *Accord* Tr. 1383. As with the other prescriptions and early fills and refills related to J.G., I find that the front of the original prescription, the back of the original prescription bearing the fill sticker, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled and refilled the prescription early. GX 39, at 1, 3, 10; Tr. 1383.

With respect to all the early fills and refills by Trinity II with respect to lorazepam 2 mg and alprazolam 2 mg prescriptions issued by physician G.C. to J.G., Professor Doering testified that, because all of these early fills and early refills were well beyond three days early, Trinity II should have identified them as red flags during the drug utilization review process to avoid drug abuse, overuse or misuse. Tr. 1369, 1372, 1374, 1377, 1383. He further testified that Trinity II's decision to fill these prescriptions without resolving these red flags was inconsistent with Florida's standard of care, not in the usual course of professional practice, and did not reflect the proper exercise of the pharmacist's corresponding responsibility. *Id.* at 1370, 1373–74, 1377, 1379, 1384.

For a fourth customer, L.H., the Government introduced a dispensing log, patient profile, and the front and back of prescriptions to establish that Trinity II filled early at least 2 prescriptions issued to L.H. for hydromorphone 8 mg, a schedule II controlled substance, under the brand name Dilaudid. GX 40; Tr. 1384–94. The Government introduced evidence that on June 5, 2012, Trinity II filled a prescription issued by physician J.I. at the Creative Health Center to customer L.H. for 180 pills of ''Dilaudid Tablet 8 mg,'' and with directions from the prescribing physician for L.H. to take one tablet by mouth every four hours as needed. GX 40, at 1, 3, 12–13; Tr. 1387–88. Hence, the 180 pills prescribed to be taken at the rate of six pills per day constitute a 30-day supply that should have lasted L.H. until at least July 5, 2012 (assuming L.H. needed to take every dose, every day). *Accord* Tr. 1392. Nevertheless, on June 28, 2012, Trinity II filled another prescription (dated June 18, 2012 from another prescriber, E.P. at Morton Plant Hospital) [26] for another 84 pills of Dilaudid 8 mg with instructions to take one tablet every 4 hours for 14 days. GX 40, at 1, 4, 14–15; Tr. 1388–89, 1392. Thus, I find that when Trinity II filled this second prescription on June 28, 2012, Trinity II filled it at least seven days early. *Accord* Tr. 1389. On July 3, 2012, Trinity II filled a third prescription, this time from physician J.I. (who issued the June 5, 2012 prescription) to L.H., for another 96 pills of Dilaudid 8 mg with instructions to take one tablet every four hours for 16 days. GX 40, at 1, 4, 16–17; Tr. 1392–93. As a result, I find that when Trinity II filled this third prescription on July 3, 2012, Trinity II filled it nine days early because the June 28, 2012 fill should have lasted L.H. until July 12, 2012. *Accord* Tr. 1393. I also find that the front of these prescriptions, the back of the prescriptions bearing the fill stickers, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled these prescriptions early. GX 40, at 1–4, 12–17; Tr. 1391, 1393–94.

Therapeutic Duplication

The Government introduced prescription evidence at the hearing to show that Trinity II failed to resolve the red flag of ''therapeutic duplication'' with respect to one of its customers, R.H., identified in the first charge of the Show Cause Order and whose patient records the Government had requested pursuant to its December 4, 2014 subpoena. The Government introduced a dispensing log, patient profile, and the front and back of prescriptions to establish that Trinity II filled two therapeutically duplicative prescriptions issued by physician J.I. for R.H. on December 2, 2013. The first prescription was for 120 tablets of hydromorphone 8 mg, an immediate release opioid under the Dilaudid brand name, with directions to ''Take 1 Tablet by Mouth Every 6 Hours As Needed.'' GX 63, at 1, 4–6; Tr. 1560–61. The second prescription was for 120 tablets of oxycodone 30 mg, another immediate-release opiate, with the same directions to take one tablet every six hours as needed. GX 63, at 1, 4, 7–8; Tr. 1561–63. I find that the front of the prescriptions, the back of the prescriptions bearing the fill stickers, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled these two schedule II opiate prescriptions on December 2, 2013. GX 63, at 1, 4–8; *accord* Tr. 1563–64.

According to Professor Doering, when a Florida pharmacist receives two prescriptions from the same individual for two different opioids, both with the same or similar directions for use, and those two are immediate release dosage forms, the standard of care requires the pharmacist to identify that as a red flag and to initiate steps to resolve that red flag. Tr. at 2111. However, Professor Doering also testified that, in his opinion, the therapeutic duplication of hydromorphone and oxycodone with respect to R.H., or any other pharmacy customer, is not a resolvable flag. *Id.* at 1520, 1563. ''[P]harmacists would fall below the standard of care to dispense these two [opioids] together because of the inherent dangers that go along with giving both of these very potent narcotic analgesics . . . [t]hat could in fact be used together, at the same time.'' *Id.* at 1520. He also testified that therapeutic duplication should be identified during the drug utilization review process. *Id.* at 1526, 1541–42. Professor Doering testified that Trinity II's filling of these prescriptions for R.H. were inconsistent with the standard of care, not filled in the usual course of professional practice, and inconsistent with the proper exercise of the pharmacist's corresponding responsibility. *Id.* at 1563–64.

[26] The fact that the same patient, L.H., went to two different prescribers in the same month for the same schedule II drug also demonstrates the appearance of doctor shopping—another red flag of overuse or misuse. Professor Doering testified that this too should have been identified during the drug utilization process as indicative of overuse, misuse, or abuse. Tr. 1390. There is no evidence in the record that Trinity II attempted to resolve this red flag before filling the second of these prescriptions on June 28, 2012. Professor Doering also testified that Trinity II's decision to fill the June 18, 2012 prescription on June 28, 2012 without resolving these red flags was inconsistent with Florida's standard of care, not in the usual course of professional practice, and did not reflect the proper exercise of the pharmacist's corresponding responsibility. *Id.* at 1391.

Two Prescriptions for the Same Drug on the Same Date

The Government introduced prescription evidence at the hearing to show that Trinity II failed to resolve the red flag of receiving two prescriptions for the same drug on the same date from the same customer (J.K.)—another form of ''therapeutic duplication.'' The customer, J.K., was identified in the first charge of the Show Cause Order, and the Government had requested his patient records pursuant to its December 4, 2014 subpoena. The Government introduced a dispensing log, patient profile, and the front and back of prescriptions to establish that Trinity II filled two prescriptions issued by physician M.L. for J.K. on the same day—December 4, 2013. The first prescription was for 100 tablets of hydromorphone 8 mg, under the Dilaudid brand name, with instructions that the patient take one tablet every four to six hours—a 16-day supply. GX 69, at 1, 3–5; Tr. 1584–86. The second prescription was for 50 tablets of Dilaudid 8 mg with the same directions for use—an eight-day supply. GX 69, at 1, 3, 6–7; Tr. 1584–86. The dispensing log also shows that J.K. paid ''cash'' for these two prescriptions, just as he had for every other prescription that Trinity II had filled for J.K. between March 5, 2012 and February 3, 2014. GX 69, at 1. According to Professor Doering, two prescriptions for the same medication filled on the same date for the same customer is an unresolvable red flag of diversion that should have been identified during the drug utilization process. Tr. 1568, 1586–87. Regardless of whether it is resolvable, I find that the front of the prescriptions, the back of the prescriptions bearing the fill stickers, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled these two prescriptions for the same drug and for the same customer (J.K.) on December 4, 2013. GX 69, at 1, 3–7; *accord* Tr. 1584–85, 1587.

Distances

The Government introduced prescription evidence at the hearing to show that Trinity II failed to resolve the red flag of customers who had allegedly travelled unusually long distances and/or had taken suspicious routes for the purpose of obtaining, presenting, and filling prescriptions for controlled substances. Specifically, the Government introduced evidence exhibiting this red flag with respect to four of Trinity II's customers identified in the first charge of the Show Cause Order and whose patient records the Government had requested pursuant to its December 4, 2014 subpoena.

For one such customer, S.S., the Government introduced a dispensing log, patient profile, and the front and back of prescriptions to establish that on June 5, 2013, Trinity II filled a prescription for S.S. for 150 tablets of hydromorphone 8 mg, with instructions to take one tablet every four hours as needed for breakthrough pain. GX 44, at 1, 2, 8–9; Tr. 1676–80. Although the front of the prescription did not include S.S.'s address,[27] the other prescription evidence—the fill sticker attached to the back of the prescription, the dispensing log, and the patient profile—all show S.S.'s address to be in Orange Park, Florida, which is a city located near Jacksonville, Florida. GX 44, at 1, 2, 9; Tr. 1680.

It is undisputed that Trinity II is located in Clearwater, Florida, and that both the front of the prescription and Trinity II's dispensing log show that the prescribing physician's address was in Tampa, Florida. GX 44, at 1, 8. The Government also introduced Google Maps evidence showing that S.S. would have traveled: (1) 175 miles from his home address to the prescribing physician, (2) about 23 miles from there to Trinity II, and then (3) 199 miles from Trinity II back to his home address. GX 44, at 4–7; Tr. 1681–83. Indeed, S.S. would have to travel across the entire state of Florida—from the Jacksonville area on the East Coast of Florida to the greater Tampa Bay area on the West Coast of Florida—to obtain and to fill this schedule II prescription. Thus, I find that S.S. would have to travel approximately 397 miles roundtrip to obtain the June 5, 2013 hydromorphone 8 mg prescription from his physician, and that S.S. would have to travel at least 198 miles after picking up his prescription to return home. *See id.* I also find that Trinity II knew the addresses of both S.S. and his prescribing physician. *See* GX 44, at 1, 2, 8–9. I further find that the front of the prescription, the back of the prescription bearing the fill sticker, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled the prescription given the unusual distances S.S. traveled to obtain and to fill this prescription. GX 44, at 1, 2, 8–9; *accord* Tr. 1676–77, 1685, 2113.

Although Professor Doering testified that there is no magical ''distance cutoff'' in determining when a particular distance constitutes a red flag, Tr. 1692–93, in response to hypothetical questions, he did testify that when a pharmacist in Florida receives a prescription for a controlled substance from a customer whose address is, for example, 75 miles away, ''[t]he standard of care calls for the pharmacist to identify that as a red flag and to initiate steps that may resolve that red flag'' and to document any such resolution. Tr. 2112. He testified that this standard of care ''requires the pharmacist to find out the address of where the person resides'' and ''to ask the patient for that address information'' by, for instance, ''ask[ing] for identification.'' Tr. 2119–20; *see also id.* at 1684. He further testified that in his opinion the distance red flag for this prescription should have been identified as part of the drug utilization process, and the fact that S.S. also paid cash[28] raised an additional red flag. Tr. 1684, 1686 (''patients paying cash for their prescriptions is a recognized red flag''), 1696. As a result, Professor Doering testified that filling this prescription was inconsistent with Florida's standard of care, that it was not filled in the usual course of professional practice, nor filled in the proper exercise of the pharmacist's corresponding responsibility. *Id.* at 1701–02.[29]

For a second customer, D.W., the Government introduced a dispensing log, patient profile, and the front and back of prescriptions to establish that on March 8, 2012, Trinity II filled two prescriptions for D.W.—one for 120 tablets of oxycodone 30 mg with

[27] *See* GX 44, at 8. The Show Cause Order alleges that Trinity II's filling of this prescription also constitutes an independent violation of 21 CFR 1306.05, which requires, *inter alia,* all prescriptions for controlled substances to bear the full name and address of the patient and imposes a corresponding liability ''upon the pharmacist . . . who fills a prescription not prepared in the form prescribed by DEA regulations.'' *Id.* at § 1306.05(a), (f). As set forth more fully *infra,* I agree.

[28] Trinity II's own dispensing report states that S.S. paid ''cash'' for the July 5, 2013 prescription, and I find that S.S. did indeed pay for this prescription (rather than a third-party payer). *See* GX 44, at 1. The prescription evidence also does not reflect that Trinity II ever attempted to resolve the ''paying cash'' red flag. Tr. 1686.

[29] As discussed *infra* in the context of cocktail prescriptions, on June 27, 2013 and July 23, 2013, Trinity II also filled prescriptions for S.S. on each date for carisoprodol 350 mg, hydromorphone 8 mg and Xanax 2 mg. GX 44, at 1, 2, 14–19, 22–27; Tr. 1697–98; 1703–05. I also find that the front of the prescriptions, the back of the prescriptions bearing the fill stickers, the patient profile, and the dispensing log do not reflect any notes or comments whatsoever explaining why Trinity II filled these prescriptions given the unusual distances S.S. traveled to obtain and to fill these prescriptions. GX 44, at 1, 2, 14–19, 22–27; *accord* Tr. 1700, 1705. Professor Doering also testified that filling the June 27, 2013 and July 23, 2013 prescriptions were inconsistent with Florida's standard of care, that they were not filled in the usual course of professional practice or in the proper exercise of the pharmacist's corresponding responsibility. Tr. 1701, 1705.

ginger[30] (with instructions to take one capsule four times daily) and the other for 30 tablets of carisoprodol 350 mg under the brand name Soma (with instructions to take one tablet every night). GX 45, at 1, 2, 8–11; Tr. 1710, 1713–14.

According to the front of the oxycodone prescription,[31] the fill sticker attached to the back of both prescriptions, the dispensing log, and the patient profile, D.W.'s address was in Wellborn, Florida. GX 45, at 1, 2, 8, 9, 11; Tr. 1708–09. It is undisputed that the front of both prescriptions and Trinity II's fill stickers show that the prescribing physician's address was in Tampa, Florida. GX 45, at 8–11; Tr. 1709–1712. The Government also introduced Google Maps evidence showing that D.W. would have traveled: (1) 184 miles from his home address to the prescribing physician, (2) about 18 miles from there to Trinity II, and then (3) 202 miles from Trinity II back to his home address. GX 45, at 4–7.

Thus, I find that D.W. would have to travel approximately 404 miles roundtrip to obtain the March 8, 2012 oxycodone and Soma prescriptions from his prescribing physician, fill them at Trinity II, and then return home. *See id.* I also find that Trinity II knew the address of both D.W. and his prescribing physician. *See* GX 45, at 1, 2, 8–11. I further find that the front of the prescriptions, the back of the prescriptions bearing the fill sticker, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled the prescriptions given the unusual distances D.W. traveled to obtain and to fill these prescriptions. GX 45, at 1, 2, 8–11; *accord* Tr. 1712.

Professor Doering testified that in his opinion ''[t]he long distance between the patient's home and the doctor's office'' was a red flag that was presented by D.W.'s prescriptions and which Trinity II should have identified as part of the drug utilization process. Tr. 1712. As a result, Professor Doering testified that filling these prescriptions was inconsistent with Florida's standard of care, that they were not filled in the usual course of professional practice, nor filled in the proper exercise of the pharmacist's corresponding responsibility. *Id.* at 1712–13.

On April 5, 2012 and on May 3, 2012, Trinity II also filled prescriptions for D.W. for 120 tablets of oxycodone 30 mg with ginger each time—with the same instructions and from the same prescribing physician as in the March 8, 2012 oxycodone prescription that Trinity II had filled for D.W. GX 45, at 1, 2, 12–13, 16–17; Tr. 1714–17. On April 19, 2012 and May 11, 2012, Trinity II filled prescriptions for D.W. for 30 tablets of Soma 350 mg each time—again, with the same instructions and from the prescribing physician as the Soma prescription that Trinity II had filled for D.W. on March 8, 2012. GX 45, at 1, 2, 14–15, 18–19;[32] Tr. 1716, 1718. As with the March 8, 2012 prescriptions for oxycodone and Soma, I find that D.W. would have traveled approximately 404 miles roundtrip to obtain the April 5, 2012 and May 3, 2012 oxycodone prescriptions, as well as the April 19, 2012 and May 11, 2012 Soma prescriptions, from his prescribing physician, and that D.W. would have traveled at least 202 miles after picking up his prescription to return home. *See* GX 45, at 4–7. I further find that the front of the prescriptions, the back of the prescriptions bearing the fill sticker, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled the prescriptions given the unusual distances D.W. traveled to obtain and to fill these prescriptions. GX 45, at 1, 2, 12–19; *accord* Tr. 1715, 1717.

Professor Doering testified that these four prescriptions also presented the same unusual distance red flag that Trinity II should have identified as part of the drug utilization process. *See* Tr. 1715–18. He also testified that, unlike the March 8, 2012 oxycodone and Soma prescriptions that Trinity II had filled on the same day, the fact that D.W. had to make two separate trips in April and in May to get the same prescriptions further emphasized the significance of the distance red flag of diversion. *See id.* at 1716 (''it sort of adds emphasis to that long distance thing because that meant two trips instead of one''). As a result, Professor Doering testified that filling these prescriptions was inconsistent with Florida's standard of care, that they were not filled in the usual course of professional practice, nor filled in the proper exercise of the pharmacist's corresponding responsibility. *Id.* at 1715–19.

For a third customer, C.V., the Government introduced a dispensing log, patient profile, and the front and back of a prescription to establish that on May 10, 2012, Trinity II filled a prescription for C.V. for 90 tablets of hydromorphone 8 mg, under the brand name Dilaudid, with instructions to take one tablet every eight hours. GX 46, at 1–2, 7–8; Tr. 1719–21. According to the front of the prescription, the fill sticker attached to the back of the prescription, the dispensing log, and the patient profile, C.V.'s address was in Port Charlotte, Florida. GX 46, at 1–2, 7–8; Tr. 1720–21. It is undisputed that the front of the prescription and Trinity II's fill stickers show that the prescribing physician's address was in Tampa, Florida. GX 46, at 7–8; Tr. 1720–21. The Government also introduced Google Maps evidence showing that C.V. would have traveled: (1) 105 miles from his home address to the prescribing physician, (2) about 22 miles from there to Trinity II, and then (3) 97 miles from Trinity II back to his home address. GX 46, at 3–6. Thus, I find that C.V. would have to travel approximately 224 miles roundtrip to obtain the May 10, 2012 prescription from his prescribing physician, fill it at Trinity II, and then return to his home. *See id.* I also find that Trinity II knew the address of both C.V. and his prescribing physician, and that C.V. paid ''cash'' for the prescription. *See* GX 46, at 1–2, 7–8. I further find that the front of the prescription, the back of the prescription bearing the fill sticker, the patient profile, and the dispensing log do not reflect any notes or comments whatsoever explaining why Trinity II filled the prescription given the unusual distances C.V. traveled to obtain and to fill this prescription (or the fact that C.V. paid ''cash'' to fill it). *Id.; accord* Tr. 1719, 1722.

Professor Doering testified that this prescription presents ''the distance red flag'' that Trinity II should have identified as part of the drug utilization process. *See* Tr. 1722. As a result, he testified that filling this prescription was inconsistent with Florida's standard of care, that it was not filled in the usual course of professional practice, nor filled in the proper exercise of the pharmacist's corresponding responsibility. *Id.* at 1722–23.

For a fourth customer, D.E., the Government introduced a dispensing log, patient profile, and the front and back of a prescription to establish that on June 13, 2013 and on July 3, 2013, Trinity II filled two prescriptions for D.E. for 120 tablets of hydromorphone 8 mg for each prescription, both under the brand name Dilaudid, with the same

[30] Professor Doering testified that physicians will issue a prescription calling for compounding with ginger ''to deter one from injecting the drug intravenously'' because ginger will ''make it sting and burn if someone were to try to inject it intravenously.'' Tr. 1265. It is also a deterrent to ''nasal insufflation'' (snorting) of the drug because ''it would be [an] irritant to the lining of the nasal mucous membranes.'' *Id.* at 1558.

[31] The front of the second prescription for Soma did not bear the patient's address. *See* GX 45, at 10.

[32] And like the March 8, 2012 Soma prescription to D.W., the front of these Soma prescriptions lacked the patient's address. *See id.*

instructions to take one tablet every six hours for 30 days. GX 48, at 1–2, 8, 10–11; Tr. 1724–25, 1728. According to the front of the prescriptions, the fill stickers attached to the back of the prescriptions, the dispensing log, and the patient profile, D.E.'s address was in Brooksville, Florida. GX 48, at 1–2, 8; Tr. 1724, 1728–29. It is undisputed that the front of the prescriptions show that the prescribing physician's address was in Tampa, Florida. GX 48, at 8, 10; Tr. 1725. The Government also introduced Google Maps evidence showing that D.E. would have traveled: (1) 44 miles from his home address to the prescribing physician,[33] (2) about 20 miles from there to Trinity II, and then (3) 55 miles from Trinity II back to his home address. GX 48, at 3–7. Thus, I find that D.E. would have to travel approximately 119 miles roundtrip to obtain the June 13, 2013 prescription from his prescribing physician, fill it at Trinity II, and then return to his home. *See id.* I also find that Trinity II knew the address of both D.E. and his prescribing physician, and that D.E. paid ''cash'' for the prescription. *See* GX 46, at 1–2, 8, 10. I further find that the front of the prescriptions, the back of the prescriptions bearing the fill stickers, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled the prescription given the unusual distances D.E. traveled to obtain and to fill this prescription (or the fact that D.E. paid ''cash'' to fill it). *Id.; accord* Tr. 1727, 1732.

Moreover, I find that when Trinity II filled D.E.'s Dilaudid prescription on July 3, 2013, Trinity II filled that prescription early—yet another red flag. Specifically, D.E.'s prescription that Trinity II filled on June 13, 2013 was for 120 tablets of Dilaudid 8 mg and instructions for D.E. to take one tablet every six hours for 30 days. GX 48, at 1–2, 8; Tr. 1729–30. Hence, the 120 pills prescribed to be taken at the rate of four pills per day constitute a 30-day supply that should have lasted D.E. until at least July 12, 2013. Nevertheless, on July 3, 2013, Trinity II filled another prescription for another 120 pills of Dilaudid 8 mg with instructions to take one tablet every 6 hours for 30 days. GX 48, at 1–2, 10–11; Tr. 1731. Thus, I find that when Trinity II filled this second prescription on July 3, 2013, Trinity II filled it 9 days early. *Accord* Tr. 1731. I also find that the front of these prescriptions, the back of the prescriptions bearing the fill stickers, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled this prescription early. GX 48, at 1–2, 8, 10–11; Tr. 1731–32.

Professor Doering testified that this prescription presents ''[t]he combination of the red flags. It's too early and the distance red flag.'' Tr. 1731, 1727 (''the distance is a long ways. Which in the judgment of my opinion, the pharmacist, it should raise a red flag.''). As a result, he testified that filling these prescriptions was inconsistent with Florida's standard of care, that they were not filled in the usual course of professional practice, nor filled in the proper exercise of the pharmacist's corresponding responsibility. *Id.* at 1727–28, 1732.

Cocktail Prescriptions

The Government introduced prescription evidence at the hearing to show that Trinity II failed to resolve the red flag of ''cocktail prescriptions,'' which the Government alleged occurs when a customer presents multiple prescriptions that would provide the same patient an opioid, a benzodiazepine, and a muscle relaxer. Specifically, the Government introduced evidence exhibiting this red flag with respect to three of Trinity II's customers identified in the first charge of the Show Cause Order and whose patient records the Government had requested pursuant to its December 4, 2014 subpoena.

For one such customer, S.S., the Government introduced a dispensing log, patient profile, and the front and back of prescriptions to establish that on June 27, 2013, Trinity II filled three prescriptions issued by the same prescribing physician for him: (1) 150 tablets of hydromorphone 8 mg (with instructions to take one tablet ''every 4 hours as needed [for] breakthrough pain''); (2) 60 tablets of carisoprodol 350 mg, under the brand name Soma (with instructions to take one tablet ''twice daily as needed''); and (3) 45 tablets of alprazolam 2 mg, under the brand name Xanax (with instructions to take half of a tablet ''three times daily as needed for anxiety'') . GX 44, at 1, 2, 14–19; Tr. 1697–98. On July 23, 2013, Trinity II filled for S.S. the same three prescriptions from the same prescribing physician for hydromorphone 8 mg, carisoprodol 350 mg, and alprazolam 2 mg in the same amounts and with the same dosage instructions as for the June 27, 2013 prescriptions. GX 44, at 1, 2, 22–27; Tr. 1703–05. Thus, I find that the evidence establishes that Trinity II twice (on June 27, 2013 and on July 23, 2013) filled prescriptions for S.S. for the same combination of controlled substances—an opioid (hydromorphone), a benzodiazepine (alprazolam), and a muscle relaxant (carisoprodol). GX 44, at 1, 2, 14–19, 22–27. I further find that the front of the prescriptions, the back of the prescriptions bearing the fill stickers, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled this combination, or cocktail, of prescriptions. *Id.; accord* Tr. 1700, 1705.

For a second customer, J.Ha., the Government introduced a dispensing log, patient profile, and the front and back of prescriptions to establish that on March 7, 2012, Trinity II filled three prescriptions issued by the same prescribing physician for her: (1) 120 tablets of oxycodone 30 mg (with instructions to take 1 tablet every 6 hours as needed); (2) 30 tablets of carisoprodol 350 mg, under the brand name Soma (with instructions to take 1 tablet every night); and (3) 30 tablets of alprazolam 2 mg, under the brand name Xanax (with instructions to take one tablet daily). GX 73, at 1, 2, 4–9; Tr. 1594–98. On May 3, 2012 and May 31, 2012, Trinity II filled for J.Ha. prescriptions from the same prescribing physician for oxycodone 30 mg, carisoprodol 350 mg, and alprazolam 2 mg in the same amounts and with the same dosage instructions[34] as for the March 7, 2012 prescriptions. GX 73, 1–2, 10–21; Tr. at 1605–12. Thus, I find that the evidence establishes that on three separate occasions Trinity II filled for J.Ha. prescriptions for the following combination of controlled substances—an opioid (oxycodone), a benzodiazepine (alprazolam), and a muscle relaxant (carisoprodol). GX 73, at 1, 2, 4–21. I further find that the front of the prescriptions, the back of the prescriptions bearing the fill stickers, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled this

[33] The street address of the prescribing physician reflected on the front of the prescriptions was different from what was shown on Trinity II's dispensing report and fill sticker; however, the identity and the city (Tampa, Florida) of the physician was the same in every address. *Compare* GX 46, at 1 *with id.* at 8, 10. Although the distance calculation from the same city (Tampa) would have been very similar using either Tampa address, I find that the address on the prescriptions themselves is the most reliable evidence of the prescribing physician's address because it came directly from the physician. I find that the calculation of the distances to and from D.E.'s prescribing physician—as reflected in the Government's Google Maps evidence—is based, appropriately, on the street address reflected on the front of the June 13, 2013 and July 3, 2013 prescriptions. *Id.* at 4.

[34] The fill sticker for the May 31, 2012 oxycodone 30 mg prescription for J.Ha. reflected the additional phrase ''for pain'' to the otherwise identical instruction that J.Ha. had received on the March 7, 2012 and May 3, 2012 prescriptions to take one tablet of oxycodone 30 mg every six hours as needed. GX 73, at 17.

combination, or cocktail, of prescriptions. *Id.; accord* Tr. 1594, 1597, 1604, 1608, 1612.

For a third customer, R.Ha., the Government introduced a dispensing log, patient profile, and the front and back of prescriptions to establish that on March 7, 2012, Trinity II filled the following three prescriptions issued by the same prescribing physician for him: (1) 180 tablets of oxycodone 30 mg (with instructions to take one tablet every four to six hours as needed); (2) 60 tablets of carisoprodol 350 mg, under the brand name Soma (with instructions to take one tablet twice daily); and (3) 30 tablets of alprazolam 1 mg, under the brand name Xanax (with instructions to take one tablet every night). GX 74, at 1, 2, 4–9; Tr. 1598–1600. On May 3, 2012 and May 31, 2012, Trinity II filled for R.Ha. the same three prescriptions from the same prescribing physician for oxycodone 30 mg, carisoprodol 350 mg, and alprazolam 2 mg in the same amounts and with the same dosage instructions [35] as for the March 7, 2012 prescriptions. GX 74, 1–2, 10–21; Tr. at 1606–08, 1611–12. Thus, I find that the evidence establishes that on three separate occasions Trinity II filled for R.Ha. prescriptions for the following combination of controlled substances—an opioid (oxycodone), a benzodiazepine (alprazolam), and a muscle relaxant (carisoprodol). GX 74, at 1, 2, 4–21. I further find that the front of the prescriptions, the back of the prescriptions bearing the fill stickers, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled this combination, or cocktail, of prescriptions. *Id.; accord* Tr. 1597, 1604, 1608, 1612.

Professor Doering testified that the combination of these three drugs that Trinity II filled for customers like S.S., J.Ha., and R.Ha. constituted ''the unholy trinity'' or ''cocktail prescriptions'' that present a ''drug-drug interaction'' red flag because they are ''symbolic of drug interactions that might cause harm to the patient.'' Tr. 894–96. He emphasized that this ''combination of drugs'' risks harm to the patient because they ''have additive central nervous system depressant properties.'' *Id.* at 1698, *see also id.* at 1603 (''that's also the red flag of the so called accumulative additive effects of drugs with CNS depressant properties''). In his opinion, this is a red flag that Trinity II should have identified and resolved during the drug utilization review process with respect to customers S.S., J.Ha., and R.Ha. *Id.* at 1446, 1448.[36] As a result, he testified that filling these cocktail prescriptions without resolving the drug-drug interaction red flag was inconsistent with Florida's standard of care, that they were not filled in the usual course of professional practice, nor filled in the proper exercise of the pharmacist's corresponding responsibility. *Id.* at 1604–05, 1609, 1612–13, 1701, 1705.

Pattern Prescribing to Patients With the Same Last Name and Address

The Government introduced prescription evidence at the hearing to show that Trinity II failed to resolve the red flag of ''pattern prescribing'' reflecting a lack of individualized drug therapy, and which the Government alleges occurs whenever two related individuals present prescriptions issued (1) by the same prescribing physician, (2) on the same day, and (3) for the same drugs. Specifically, the Government introduced evidence exhibiting this red flag with respect to two sets of Trinity II's customers, in which each set of two customers shared a last name and home address, and who were also identified in the first charge of the Show Cause Order and whose patient records the Government had requested pursuant to its December 4, 2014 subpoena.

For the first set of customers, J.Ha. and R.Ha., and as noted above in the ''cocktail prescription'' fact findings, the Government introduced dispensing logs, patient profiles, and the front and back of prescriptions to establish that on March 7, 2012, May 3, 2012, and May 31, 2012, J.Ha. and R.Ha. presented and Trinity II filled three prescriptions for the same controlled substances on each date: (1) Oxycodone, (2) carisoprodol, and (3) alprazolam. GX 73, at 1, 2, 4–21; GX 74, 1, 2, 4–21. The same evidence also shows that J.Ha. and R.Ha. share the same: (1) Home address in Clearwater, Florida; (2) last name; and (3) prescribing physician. *Id.* As a result, I find that on three separate occasions, the same prescribing physician issued prescriptions for the same combination of drugs (oxycodone, carisoprodol, and alprazolam) to J.Ha. and R.Ha. on the same dates. GX 73, at 1, 2, 4, 6, 8, 10, 12, 14, 16, 18, 20; GX 74, at 1, 2, 4, 6, 8, 10, 12, 14, 16, 18, 20. In addition, I find that on March 7, 2012, May 3, 2012, and May 31, 2012, Trinity II filled each of these prescriptions even though Trinity II knew that they came: (1) From the same prescribing physician; (2) for the same combination of drugs; and (3) for patients with the same last name and same home address. GX 73, at 1, 2, 5, 7, 9, 11, 13, 15, 19, 21; GX 74, at 1, 2, 5, 7, 9, 11, 13, 15, 19, 21. I further find that the front of the prescriptions, the back of the prescriptions bearing the fill stickers, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II nonetheless filled these prescriptions. *Id.; accord* Tr. 1594, 1597, 1604, 1608, 1612.

For the second set of customers, M.W. and J.W., the Government introduced dispensing logs, patient profiles, and the front and back of prescriptions to establish that on November 20, 2013 and on December 18, 2013, M.W. and J.W. presented and Trinity II filled identical prescriptions for 150 capsules of oxycodone 30 mg compounded with ginger, with the same dosage instructions to take one capsule every four to six hours for pain.[37] GX 75, at 1, 3, 4–7; GX 76, at 1, 3, 4–7. The same evidence also shows that M.W. and J.W. share the same: (1) Home address in Clearwater, Florida; (2) last name; and (3) prescribing physician. *Id.* As a result, I find that on two separate occasions, the same prescribing physician issued prescriptions for the same controlled substance (oxycodone) to M.W. and J.W. on November 20, 2013 and on December 18, 2013. GX 75, at 1, 3, 4, 6; GX 76, at 1, 3, 4, 6. In addition, I find that on those same dates Trinity II filled each of these prescriptions, even though Trinity II knew that they came: (1) From the same prescribing physician; (2) for the same controlled substance; and (3) for patients with the same last name and home address. GX 75, at 1, 3, 5, 7; GX 76, at 1, 3, 5, 7. I further find that the front of the prescriptions, the back of the prescriptions bearing the fill stickers, the patient profile, and the dispensing log do not reflect any notes or comments whatsoever explaining why Trinity II nonetheless filled these

[35] The fill sticker for the May 3, 2012 and May 31 2012 alprazolam 1 mg prescriptions instructed R.Ha. to take one-half to 1 tablet every day as needed, which is slightly different from the instruction in the March 7, 2012 prescription to take one tablet every night. *Compare* GX 74, at 7 *with id. at* 13, 19. Professor Doering testified that, in his opinion, this was a labeling error. Tr. 1601–02.

[36] Professor Doering also testified that the fact that Trinity II filled the cocktail prescriptions for S.S. 14 days after the prescriptions were issued presented another red flag because patients who are legitimately ''in pain and or having symptoms that might require these medications[ ] will get the prescriptions filled soon after they're written.'' Tr. 1700; *compare* GX 44, at 14, 16, 18 (prescriptions dated June 13, 2013) *with id.* at 15, 17, 19 (corresponding fill stickers dated June 27, 2013). I find that the front of these prescriptions, the back of the prescriptions bearing the fill stickers, the patient profile, and the dispensing log do not reflect any notes or comments explaining why Trinity II filled this combination, or cocktail, of prescriptions 14 days after the prescriptions were issued. *Id.; accord* Tr. 1700.

[37] M.W.'s prescriptions also instructed a ''LIMIT [of] 5 [capsules] per day.'' GX 75, at 4, 6.

prescriptions. *Id.; accord* Tr. 1616, 1619–21, 1623.

Professor Doering testified that when two patients with the same last name and address, like J.Ha. and R.Ha. or M.W. and J.W., present prescriptions on the same day from the same prescribing physician for the same controlled substance and with the same dosage instructions, ''it's what some have come to call pattern prescribing.'' Tr. 1602–03; *see also id.* at 1608, 1612, 1620, 1623. In his opinion, this is a red flag that Trinity II should have identified and resolved during the drug utilization review process ''[b]y contacting the prescriber and/or discussing it with the patient'' before filling. *See id.* at 1603. As a result, he testified that filling these prescriptions without resolving the pattern prescription red flag was inconsistent with Florida's standard of care, that they were not filled in the usual course of professional practice, nor filled in the proper exercise of the pharmacist's corresponding responsibility. *Id.* at 1604–05, 1609, 1612–13, 1620–21, 1623–24.

Controlled Substances Filled Before Authorized Date

At the hearing, the Government introduced into evidence copies of a dispensing log and the front and back of two prescriptions for controlled substances that the Government alleged Trinity II twice filled for customer D.G. before the date authorized by the prescribing physician and in violation of 21 CFR 1306.04(a), 1306.06, 1306.11, and 21 U.S.C. 829 as set forth in the third and fourth charges of the Show Cause Order. For example, the Government introduced a dispensing log and the front and back of a prescription dated November 15, 2013 showing that Trinity II filled a prescription for D.G. on November 20, 2013 for 7 patches of fentanyl-50 mcg/hr, a schedule II controlled substance, under the brand name Duragesic. GX 77, at 1, 6, 7; Tr. 1508–09, 1513–15. The front of the prescription, however, expressly instructed ''NO EXCEPTIONS DO NOT FILL UNTIL 12–06–2013.'' GX 77, at 6; Tr. 1514.

Although the CALJ did not recommend findings of fact related to the Government's allegations that Trinity II filled prescriptions early as set forth in the first two charges of the Show Cause Order, for this (third) charge of the Order, the CALJ did choose to recommend findings of fact. Specifically, he recommended that I find that Trinity II filled a prescription for a schedule II controlled substance for D.G. early because it was filled on November 20, 2013—contrary to the prescription's instruction that the prescription not be filled until December 6, 2013. R.D. at 48–49. I agree and make this finding of fact.

Similarly, the Government introduced the front and back of a prescription dated December 16, 2013 showing that Trinity II filled a prescription for D.G. on December 18, 2013 for 15 patches of fentanyl-50 mcg/hr under the brand name Duragesic. GX 77, at 8, 9; Tr. 1508–11. The Government also introduced a dispensing log showing that Trinity II filled the prescription on December 23, 2013. GX 77, at 1; Tr. 1511. The front of the prescription, however, expressly instructed ''NO EXCEPTIONS DO NOT FILL UNTIL 1–5–2014.'' GX 77, at 8; Tr. 1511–12. The CALJ recommended for this (fourth) charge of the Show Cause Order that I find that, regardless of whether Trinity II filled this prescription on December 18 or December 23, 2013, Trinity II nonetheless filled the prescription contrary to the prescribing physician's express instruction that the prescription not be filled until January 5, 2014. R.D. 48–49, 48 n. 114. I agree and make this finding of fact.

With respect to these two prescriptions filled by Trinity II, Professor Doering testified that filling these prescriptions before the date set forth in a ''DO NOT FILL UNTIL'' instruction was inconsistent with Florida's standard of care, that they were not filled in the usual course of professional practice, nor filled in the proper exercise of the pharmacist's corresponding responsibility. Tr. 1512, 1515–16.

Controlled Substances Filled in Stronger Concentration Than Authorized

At the hearing, the Government introduced into evidence copies of a dispensing log, patient profile, and the front and back of seven prescriptions for controlled substances that the Government alleged Trinity II filled for customer J.T. at dosages that were no less than five times stronger than authorized by the prescribing physician and in violation of 21 CFR 1306.06 and 1306.11 as set forth in the fifth charge of the Show Cause Order. For example, the Government introduced the front of a prescription dated July 11, 2013 showing that the prescribing physician issued to J.T. a prescription for 20 mg/5 ml of morphine liquid, which is a liquid dosage of morphine and a schedule II controlled substance, with instructions to take five milliliters every six hours for rescue pain. GX 35, at 40; Tr. 1394–96, 1412. However, the Government also introduced a dispensing log, patient profile, and the back of the same prescription to show that when Trinity II filled this prescription for J.T. on July 12, 2012, Trinity II filled the prescription for 20 mg/ml of morphine liquid—a concentration that is five times stronger than what the prescribing physician had authorized—and restating the same dosage directions to take five milliliters every six hours for pain. GX 35, at 1, 3, 41; Tr. 1396–98. The CALJ recommended that I find that, in fact, on July 12, 2013, Trinity II filled a prescription for J.T. for 20 mg/ml that was five times stronger than the authorized dosage. R.D. at 50. I agree and make this finding of fact.

The Government also introduced evidence at the hearing showing that Trinity II repeatedly filled prescriptions for J.T. for morphine liquid at the same concentration (20 mg/ml) that was either five or 15 times the prescribed concentration (20 mg/5 ml or 20 mg/15 ml) [38] on six other occasions—August 8, 2012, September 6, 2012, October 3, 2012, November 1, 2012, December 27, 2012, and January 25, 2012. GX 35, 1, 3, 52–53, 58–59, 66–67, 76–77, 84–87. The CALJ recommended that I find that, in fact, on each of these occasions Trinity II filled prescriptions for J.T. for 20 mg/ml and that this dosage was either five times or 15 times stronger than the authorized dosage.[39] R.D. at 50. I agree and make these fact findings.

[38] I agree with the CALJ that the prescribing physician's handwriting regarding the dosages for these prescriptions is not always clear because they appear to state either 20 mg/5 ml or 20 mg/15 ml. R.D. at 50. In the Show Cause Order, the Government alleged that the dosage for each of these prescriptions were for 20 mg/5 ml. ALJ Ex. 1b, at 15–16. However, in its Proposed Findings of Fact, the Government asked that the Agency find that all the prescriptions reflect a dosage instruction of 20 mg/5 ml except for the October 3, 2012 and November 1, 2012, prescriptions, which the Government claimed reflect a dosage instruction of 20 mg/15 ml. ALJ Ex. 40a, at 56–57. In any event, I agree with the CALJ's recommendation that for each of these prescriptions, the prescribed dosage strengths are either for 20 mg/5 ml or 20 mg/15 ml. R.D. at 50 n.120.

[39] The CALJ also recommended that I find that on November 29, 2012, Trinity II filled a prescription issued to J.T. for morphine liquid for 20 mg/ml when the dosage instruction on the corresponding prescription was for 20 mg/5 ml. R.D. at 50 & n.119 (citing GX 35, at 1, 80–81). Although this particular prescription was not the subject of testimony at the hearing nor included in the Government's Proposed Findings of Fact, the Show Cause Order does allege that on November 20, 2012, Trinity II received a prescription issued to J.T. for 20 mg/5 ml of morphine liquid but nonetheless filled it at the dosage strength of 20 mg/ml. ALJ Ex. 1b at 16. The CALJ acknowledged that the date in the Show Cause Order (November 20, 2012) does not match the date on the fill sticker (November 29, 2012), but he recommended this fact-finding anyway and implied that the discrepancy was the result of a scrivener's error in the Show Cause Order. R.D. at 50 & n.119. Because neither the dispensing log nor the patient profile for J.T. show that Trinity II filled

Professor Doering testified that the filling of these prescriptions at dosages that were at least ''five times more potent that it was supposed to be'' constituted ''a misfill.'' Tr. 1398. ''This issue has been communicated to pharmacists. Be careful when you fill liquid morphine solutions, because it's a very concentrated form of the drug.'' *Id.* He testified that the issue ''should have been identified in the global dispensing process.'' *Id.* at 1400. He further testified that these prescriptions were not filled consistent with the standard of care in Florida nor filled in the usual course of pharmacy practice. *Id.* at 1399, 1402, 1404, 1406–07, 1409, 1411–12.

Prescriptions Filled by Pharmacy Interns

The Government introduced prescription evidence at the hearing for the purpose of showing that Trinity II unlawfully allowed pharmacist interns, instead of pharmacists, to fill controlled substances prescriptions. The Government specifically alleged that Mina A. Ghobrial, a pharmacist intern at Trinity II, filled such prescriptions based on the presence of the initials ''MAG'' or ''MG'' in the ''filled by'' field of the fill stickers. *See, e.g.,* GX 79–82; *see also* Tr. 339, 452. The CALJ recommended that I find that the Government failed to present evidence to suggest that Ghobrial was not supervised by a registered pharmacist. R.D. at 46. I agree and make this finding of fact.

Respondent's Case

Respondent presented the testimony of Mark Abdelmaseeh, a pharmacist at Trinity II.[40] T. 2340–42. Abdelmaseeh testified that he worked two days per week as a pharmacist at Trinity II. *Id.* at 2342. He testified that, although technicians and interns worked with the pharmacists at Trinity II, pharmacy interns and technicians did not dispense any prescriptions. *Id.* at 2342–43. He further testified that his role included ''overlook[ing] and supervis[ing] what's going on in the pharmacy'' and ''keep[ing] open communication with the doctors to make sure that all prescriptions are legitimate and needed for the patient.'' *Id.* at 2355–56. ''I check to see if there are any contraindications or interactions, if the patient has allergies. I look to see if the prescription is valid or not. I look to see if the prescription is being filled early or not. I look to see if the prescription has any mistakes on it, and I call and verify with the doctor on every prescription that I fill.'' *Id.* at 2356.

Abdelmaseeh testified that Trinity II maintains ''records, notes and all types of other information other than just the plain prescription information'' and that ''[i]t's all documented in the computer system.'' *Id.* at 2345. He specifically testified that Trinity II ''maintain[ed] documentation regarding patient allergies'' and ''interactions with the physicians.'' *Id.* at 2360–61. He also testified that ''[w]hen the customer does pick up the medication they sign off for it that they picked up and that they do not have any questions in regards to the prescription that was picked up. . . . [a]t the point of sale.'' *Id.* at 2357. Specifically, he testified that the customer signs an electronic pad at the register confirming pick up and that the customer has no questions for the pharmacist. *Id.* at 2357–58. He further testified that he can access that information ''[a]t the register in the computer system.'' *Id.* at 2359.

The CALJ noted that Abdelmaseeh has some built-in bias because he was still an employee of Trinity II when he testified, giving him ''some stake in the proceedings.'' R.D. at 34. The CALJ found that this bias was reflected in the fact that Abdelmaseeh ''affirmatively and deliberately disregarded Respondent's counsel's . . . efforts to elicit testimony that stood within the bounds of the *in Limine* Order when there was no question pending in order to provide information that was directly the subject of the Government's objections.'' *Id.* at 34–35. The CALJ believed that this was Abdelmaseeh's ''effort to cram in as much objectionable testimony as possible'' to get around the terms of his *in Limine* Order. *Id.* at 35. As a result, the CALJ concluded that ''it is difficult to afford this witness's testimony the full weight that it otherwise might have received in this recommended decision.'' *Id.*

The CALJ sustained the Government's objections to Respondent's attempts to have Abdelmaseeh testify about evidence regarding the process the pharmacies used to verify prescriptions and resolve concerns, including a description and demonstration of the computer software utilized, because such testimony was excluded by the *in Limine* Order. *See generally* Tr. 2344–66. However, the CALJ nonetheless allowed Respondent's counsel to proffer how the witness would have testified on that topic. *Id.* at 2366–2372. Counsel proffered that Trinity II used computer software that requires a pharmacist to sign-in and approve prescriptions. *Id.* at 2367. Respondent's counsel also proffered ''that the software comes with a particular screen and tab for printing what is commonly referred to and has been referred to by Professor Doering as a patient profile which includes dispensing history, and it's limited to the dispensing history. It's a pre-programmed function of that software.'' *Id.* at 2368, 2370 (''It's an F–11 tab to print a profile.''). He also proffered that ''other fields that are maintained or other screens that are maintained'' by Trinity II's software ''include an area for notes on each prescription and that that information is maintained at the pharmacy in that . . . software.'' *Id.* at 2369, 2370–71 (''It has a tab for prescription notes, RX notes, and it operates not only by the tab but by a function key, F–3, and patient information tab that uses a function key, F–4'' and includes ''a date and time stamp entry so you can determine on which date those entries were made.''). According to counsel, Trinity II's pharmacists ''used this software as a mechanism to assist them . . . with identifying red flags and then documenting the resolution of those.'' *Id.* at 2371–72.

The proffered facts related to Trinity II's computerized record-keeping and prescription verification process are only relevant to the Show Cause Order's first two charges related to the identification and resolution of red flags of diversion. The CALJ properly stated that he would not consider the proffer as evidence in making his recommendation, but he allowed Respondent's counsel to make the proffer to preserve the issue for review. *See id.* at 2352.

Based principally on this proffer and the Government's failure to image Trinity II's computers, Trinity II contends that DEA cannot prove that it failed to document resolution of such red flags because ''DEA failed to request or obtain Respondent's records where such notes and comments were stored.'' Trinity II's Closing Submission and Proposed Findings of Fact and

any prescriptions for J.T. on November 20, 2012 (much less one corresponding to the morphine liquid prescription described in the Show Cause Order), GX 35, at 1, 3, I find that this mistake in the Show Cause Order was merely a scrivener's error. Thus, I agree that the Government intended to state in the Order that Trinity II filled this prescription on November 29, 2012. And I agree with the CALJ's recommendation that I find (and I do so find) that Trinity II filled this prescription on November 29, 2012 at a dosage that was five times stronger than the prescribing physician had instructed.

[40] Although Respondents presented the testimony of one other witness, Kristen Quinette, a former pharmacy technician at Trinity I, the CALJ did not consider her testimony in his Recommended Decision. After testifying that she had worked at one time at Trinity II, the CALJ sustained the Government's objection to her testimony since she was not noticed as a witness against Trinity II. Tr. 2232, 2247–49.

Conclusions of Law (hereinafter ''Trinity II's Post-Hearing Brief''), AJL Ex. 41, at 6. This general argument has some merit (again, assuming the proffered facts are true) regarding Trinity II's customers for whom the Government never requested ''records where such notes and comments were stored.'' *Id.*

However, Trinity II's argument does not account for the fact that the Government's December 4, 2014 subpoena required Trinity II to produce the complete patient profile that Trinity II maintained for 23 customers as required by Florida Administrative Rule 64B16–27.800, entitled ''Requirement for Patient Records.'' GX 98, at 2 (''For each of the following patients, please provide a copy of the complete patient profile your pharmacy maintained pursuant to Florida Administrative Rule 64B16–27.800''). As already noted, this rule expressly required Trinity II to maintain in its ''patient record system'' a record of every entry ''in the profile record'' for each patient for two years, including ''[p]harmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.'' ALJ Ex. 38; Fla. Admin. R. 64B16–27.800. This Rule also mandated that Trinity II ''obtain from the patient . . . and shall record'' patient information ''which may relate to prospective drug review. The pharmacist shall record any related information indicated by a licensed health care practitioner.'' *Id.* at 64B16–27.800(2).

In short, and as discussed more fully *infra,* Rule 64B16–27.800 required Trinity II to maintain patient records that included copies of any notes and comments reflecting their pharmacists' resolution of any red flags of diversion. I find that when the Government requested the complete patient profile Trinity II maintained pursuant to Rule 64B16–27.800 related to the 23 customers in the December 4, 2014 subpoena, the Government did in fact request all patient records maintained by Trinity II for those customers pursuant to that Rule—including the pharmacists' notes and comments for those customers. Thus, I reject Trinity II's contention that the Government failed to request records including Trinity II's notes and comments.[41]

Most significantly, Respondent's counsel never stated in his proffer that Trinity II did in fact maintain notes and comments resolving the alleged red flags for the 23 customers whose records were subpoenaed in this case. Although it is possible that Trinity II deliberately withheld this evidence in response to the December 4, 2014 subpoena,[42] I find that it is more likely than not that, in fact, Trinity II failed to produce notes and comments reflecting Trinity II's resolution of the red flags in response to the Government's subpoena because Trinity II did not actually resolve them and hence had no notes or comments reflecting any such resolution. Respondent's counsel was careful never to aver during cross-examination of the Government's witnesses that Trinity II actually had notes or comments regarding the 23 patients identified in the subpoena. The CALJ gave Respondent's counsel's more than enough latitude to make this claim during his proffer or during cross-examination, yet he chose not to do so. Respondent's counsel also chose not to impeach Government witnesses during cross-examination by using actual notes and comments (or any other information) reflecting Trinity II's resolution of red flags for any customer discussed at the hearing. Although the *in Limine* Order precluded Trinity II from, *inter alia,* offering such information as evidence in its case-in-chief (ALJ Ex. 29, at 3), nothing in that Order precluded Trinity II from using this information to impeach the Government's witnesses.[43] Indeed, it was in Trinity II's self-interest to use such notes and comments (if they existed) during cross-examination of the Government's witnesses because it would have been an effective way to impeach Government witnesses' testimony that they saw no evidence that Trinity II resolved any red flags of diversion. It would be a remarkable oversight for Respondent's counsel not to use such information during cross-examination if it did exist. As already noted, I find that it did not.[44]

Discussion

Before proceeding to analyze the evidence under the public interest factors, it is necessary to review the CALJ's discussion of two issues raised in the Government's Exceptions to the CALJ's Recommended Decision: (1) Whether the Government should have provided DEA–6s to Respondent that DEA had provided to its expert and (2) whether the expert's testimony was sufficiently ''reliable'' under the Administrative Procedure Act (''APA'')

[41] And it is also for this reason that I have limited my fact findings, *supra,* regarding the Show Cause Order's first two charges relating to violations of Trinity II's corresponding responsibility to allegations involving those 23 patients.

[42] During Respondent's counsel's cross-examination of Professor Doering regarding the scope of the Government's December 4, 2014 subpoena request for 23 customers' patient profiles maintained pursuant to Rule 64B16–27.800, Respondent's counsel asked ''Is the word 'profile' anywhere in that Florida administrative code provision?'' (Tr. 2174), expecting the witness to confirm counsel's own understanding regarding the rule. Professor Doering then validated that (mis)understanding by stating that the word ''profile'' ''does not appear'' to him as he quickly read the rule on the stand. Tr. 2176. This reading, of course, is incorrect—Rule 64B16–27.800(3) expressly references patient profiles. Government counsel immediately corrected this error on re-direct by asking Professor Doering to read that provision into the record: ''A patient record shall be maintained for a period of not less than two years from the date of the last entry in the *profile* record. This record may be a hard copy or a computerized form.'' Tr. 2207 (emphasis added). Although this exchange raises the possibility that Respondent's counsel advised his clients not to produce the notes and comments regarding the 23 customers referenced in the subpoena based on this misunderstanding of the rule, I find (for the reasons set forth in the text above) that it is more likely than not that Trinity II did not produce any notes or comments regarding these customers because they do not exist.

[43] In fact, the CALJ lacks the authority to preclude a respondent from using relevant information to impeach a witness during cross-examination. *See Farmacia Yani,* 80 FR 29053, 29063 n.25 (2015) (finding that it was prejudicial error to preclude a respondent from using a document to impeach a witness on cross-examination, even where respondent had failed to present the document to the Government in advance of the hearing). Moreover, the APA and our regulations preserve a respondent's right to present information on cross-examination for the purpose of impeaching the Government's witnesses. *See* 5 U.S.C. 556(d) (''A party is entitled . . . to conduct such cross-examination as may be required for a full and true disclosure of the facts.''); 21 CFR 1316.60.

[44] For the same reason, I reject Trinity II's Exception that the CALJ's *in Limine* Order ''did not permit the Respondents to present relevant evidence to the charges set forth in the show cause order. As a result, the Respondents were limited in their ability to explain the computer system used by the Respondents, which would have clarified the record keeping questions.'' Respondents Trinity Pharmacy (I)'s and Trinity Pharmacy (II)'s Exceptions to the Recommended Decision of the Administrative Law Judge (''Resp. Except.''), at 7. Although the CALJ did limit Trinity II's ability to present evidence as part of its case-in-chief, as already noted, the CALJ (1) gave Trinity II multiple opportunities to comply with his prehearing orders, (2) did not (and could not) limit its ability to present information during cross-examination of the Government's witnesses, and (3) even gave Trinity II the opportunity to provide an attorney proffer at the hearing in which Trinity II's counsel could have at least proffered facts which, if true, would have rebutted the Government's case. Again, as already noted, Trinity II chose not to do so. Accordingly, I find that the CALJ acted within his discretion when he issued his *in Limine* Order and denied Trinity II's reconsideration motion, and I reject Trinity II's Exception to the CALJ's *in Limine* Order.

Trinity II also raised in this Exception that the CALJ's *in Limine* Order precluded it from introducing evidence that ''would have corroborated Kristen Quinette that pharmacy technicians were not permitted to dispense prescriptions.'' *Id.* at 7. None of the allegations in the Show Cause Order relate to pharmacy technicians, and the CALJ limited her testimony's relevance to Trinity I. R.D. at 33 n. 86. In any event, and assuming Trinity II intended to state in its Exceptions that it would provide testimony related to pharmacy interns, I find that this Exception is moot because I find *infra* for Trinity II on the charges related to pharmacy interns.

to be given weight in my decision. *See* ''Government Exceptions'' (hereinafter ''Gov. Except.'') at 13–54.

Requirement To Produce Documents Relied Upon by the Expert

In his Recommendation, the CALJ included a discussion of whether the Government should have produced to Respondent copies of a DEA–6 related to Trinity II that DEA had provided [45] to the Government's expert witness, Professor Doering. R.D. at 27–28, 28 nn. 78–79.[46] In that discussion, the CALJ stated his belief that the DEA's intent in providing documents to an expert is relevant to determining whether the expert relied upon these documents in forming his opinion. R.D. at 28 n. 78 (''Like the other documents forwarded by DEA to Professor Doering, DEA–6s were furnished to him to assist him in formulating his expert opinion on the Government's theory of the case.''), *id.* at 28 (''The proposition that the Government would supply DEA–6s (or any other form) to an expert with the expectation that those documents would play no role 'whatsoever' is dubious at best. Professor Doering was sent DEA–6s so he would read, analyze, and utilize them in forming his expert opinion''). Contrary to the CALJ's belief, the Government's purported ''expectation'' that Professor Doering would rely on DEA–6s provided to him is both factually unsupported and legally irrelevant to the question at bar.

As a threshold matter, the record does not support the CALJ's statement that DEA expected Professor Doering to rely on the DEA–6s. The CALJ's opinion on this supposed expectation is based solely on the fact that the Government provided them to him. *See* R.D. at 27–28. However, the Government may provide an expert with any number of documents for reasons that have nothing to do with formulating the substantive basis of an expert opinion—such as an index or a table of contents. In his Recommended Decision, the CALJ failed to indicate where in in the almost 2,400-page transcript and more than 90 exhibits in the case there are facts establishing that DEA's ''expectation'' was that Professor Doering use the DEA–6s ''in formulating his expert opinion on the Government's theory of the case.'' *Id.* at 28 n.78. Thus, I find that the mere fact that the DIs provided a DEA–6 to Professor Doering regarding Trinity II is insufficient to establish that DEA did so with the intent that he rely upon it in forming his opinion.

More importantly, even if the record did support the CALJ's belief that DEA expected Professor Doering to rely on the DEA–6s in forming his opinion, it is legally irrelevant to the question of whether the Government should have produced the DEA–6s to Trinity II. ''DEA precedent has already made clear that where an expert relies on data or documents in forming his opinions, the failure of the sponsoring party to produce the data or documents denies the other party a meaningful opportunity to cross-examine the expert and show that his opinions are unfounded'' and ''runs the very substantial risk that the expert's conclusions will be rejected.'' [47] *T.J. McNichol, M.D.,* 77 FR 57133, 57146 n.18 (2012). Thus, the only fact that matters is whether Professor Doering actually relied on the DEA–6 in forming the substantive basis for his expert opinion. Accordingly, I find that, as a matter of law, the CALJ's unsupported belief that DEA expected Professor Doering to rely on the DEA–6s is irrelevant to the question of whether the Government was required to produce them to Trinity II because that legal question depends solely on whether Professor Doering, in fact, relied on the DEA–6 in forming the substantive basis for his opinion. *See T.J. McNichol, M.D.,* 77 FR at 57146 n. 18; *CBS Wholesale,* 74 FR at 36749.

The CALJ also contends that Professor Doering, in fact, relied on the DEA–6s in forming his expert opinion based on his response to the following question during direct examination:

> Q . . . What role did [the DEA–6s] play in your forming of the opinion as to the dispensings and fillings that you formed the opinion on in this case?
>
> A None whatsoever ultimately. I used the DEA Form 6 as what I would call, like a beacon or flashlight to help me understand where I might find that documentation, so I could peer upon that with my own two eyes, and not have to rely on or depend on other people's impressions or thoughts. I never rely on DEA Form 6s, because I think it's risky to do that.

Id. at 859–60. The CALJ found that, ''by his own account, [Professor Doering] used the investigative reports as a

[45] The Government also raised a separate Exception related to the CALJ's statement in his Recommended Decision that ''[i]t is unfathomable that the Agency counsel would gratuitously release a document as closely held by the Agency as a DEA–6 with no expectation that it would be used by that person for any purpose.'' Govt. Except. at 69 (emphasis omitted) (citing R.D. at 28 n. 78). The CALJ failed to indicate where the record indicates that Government counsel produced, much less ''gratuitously released,'' a DEA–6 to anyone. In fact, the record contradicts the CALJ's rendition of the facts. As Trinity II's counsel established during cross-examination of the lead DI at the hearing, it was the DIs, not ''Agency counsel,'' who provided a DEA–6 to Professor Doering.

[Mr. Sisco:] All right. Would you describe for me all of the information that you initially provided to Professor Doering?

[DI:] I believe we provided photocopies of the original prescriptions. I believe a copy of the E–FORCSE, the dispensing report. What else? And a copy of one of my 6s.

Q When you say a 6, you're talking about a DEA–6. It's your report of an investigation?

A Yes.

Tr. 581–82. Elsewhere in his Recommended Decision, the CALJ himself noted and accepted this same testimony. R.D. at 12 (accepting DI's testimony that he had ''provided . . . a copy of one of his DEA–6 forms . . . to Professor Paul Doering, the Government's expert witness. Tr. 581, 589–90''). Professor Doering corroborated the DI's response during his own testimony on direct and cross-examination, stating that he received DEA–6s from the DIs who had retained him on behalf of DEA and before he had made first contact with Government counsel regarding the case. *Id.* at 855–59, 1783–84, 1786–89, 1800–01. As the Government observed, ''[e]veryone is entitled to his own opinion, but not to his own facts.'' Govt. Except. at 1. I expect all the ALJs working for DEA to ensure that that the statements in their Recommended Decisions are well-grounded in fact, especially before making statements disparaging counsel who appear before them.

[46] This issue arose when, for the first time at the hearing, Respondent requested production of the DEA–6s that the Government had provided to its expert. R.D. at 28 n.79; *see* Tr. 586, 805–07. The Government responded at the hearing that Respondent's request was untimely because Government counsel had already notified Respondent's counsel by letter months before the hearing that DEA had previously provided DEA–6s to Professor Doering and that they would not be produced pursuant to *T.J. McNichol.* Tr. 807–08. The Government also proffered a copy of the contents of its unsigned expert discovery letter at the hearing. *Id.* The Government subsequently raised an Exception seeking a finding that it had provided notice to Respondent's counsel prior to the hearing, and the Government attached to its Exceptions an affidavit and a copy of the signed expert discovery letter addressed to Respondent's counsel consistent with its representation at the hearing. Gov. Except. at 64–69 & Attachment 1. In his Recommendation, the CALJ decided that ruling on whether this discovery request was timely was ''unnecessary'' because ''the Respondent has not sought to develop the record regarding the timeliness of the request or even asked for the testimony to be stricken as unavailable to constitute substantial evidence.'' R.D. at 28 n.79. I agree that Trinity II failed to carry its burden to prove that its request for production of the DEA–6s was timely. In any event, as discussed *infra,* I find that Professor Doering did not rely on any DEA–6 as the basis for his expert opinion, thereby obviating any putative production requirement.

[47] The CALJ cited to an earlier case, *CBS Wholesale Distributors,* 74 FR 36746, 36749 (2009), where the Agency found that expert testimony about whether a respondent was selling ''excessive quantities of combination ephedrine products'' was unreliable because the expert was unable to produce the data on which he, in turn, relied in forming his opinion of what the average monthly sales figure calculation was for such products. *Id.* at 28 n.79. Notably, nowhere in that case or in *T.J. McNichol* (or in any other case) has the Agency held that the sponsoring party must produce to the other party data or documents that had been provided to the expert based on the sponsoring party's ''expectation'' that the expert would rely on the information. Rather, as already noted, both cases set forth the same requirement: The sponsoring party must produce to the other party all information upon which the expert actually relied in forming the substantive basis for his/her opinion.

framework to examine other potential evidence.'' R.D. at 27. The CALJ concluded that this testimony ''leaves little doubt that the DEA–6s supplied to Professor Doering constituted underlying data that supported his conclusion, his assertions.'' *Id.* at 28 n.79.

Once again, the CALJ cites to the wrong legal standard under Agency precedent. The test is not whether Professor Doering used the DEA–6s ''as a beacon or flashlight'' to find other documents that constituted underlying data necessary to form his opinion. The question is whether Professor Doering, in fact, relied upon the DEA–6s as a substantive basis for his expert opinion. *See T.J. McNichol, M.D.,* 77 FR at 57146 n. 18; *CBS Wholesale,* 74 FR at 36749. Here, Professor Doering's testimony shows that he used the DEA–6 as a table of contents or an index ''to help [him] understand where [he] might find that documentation'' upon which he ultimately *did* rely upon in forming his opinion—dispensing reports, dispensing logs, copies of individual prescriptions, patient profiles, and Google Maps and MapQuest printouts of distances. Tr. 860, 862–63. He even went so far as to testify that he only used DEA–6s in this limited way so he would ''*not* have to rely on or depend on other people's impressions or thoughts'' reflected by or in the DEA–6. *Id.* at 860 (emphasis added). Simply put, if an expert uses a document like an index to ''find'' other ''documentation'' and nothing more, then the expert is not relying on that index in forming the substantive basis of an expert opinion. As a result, the other party could not use that document to show that the expert's opinion was unfounded, and the sponsoring party would not be required to produce it.

Here, the above testimony demonstrates that Professor Doering relied on dispensing reports, dispensing logs, copies of individual prescriptions, patient profiles, and Google Maps and MapQuest printouts in forming his opinions, not the DEA–6s that accompanied them. Tr. 860, 862–63. Accordingly, pursuant to *T.J. McNichol* and *CBS Wholesale,* I find that the record establishes that Professor Doering did not rely upon the DEA–6s in forming his expert opinion in this case, and thus the Government had no obligation to produce them to Trinity II.

Expert Opinions Must Be Supported by Reliable, Probative and Reliable Evidence

Under the APA, final agency action imposing a sanction must be ''supported by and in accordance with the reliable, probative, and substantial evidence.'' 5 U.S.C. 556(d). Like other evidence, the Agency has also held that an expert's opinion must be ''supported by substantial and reliable evidence.'' *CBS Wholesale,* 74 FR at 36749 (citing *id.*). I agree with the CALJ's decision to overrule Trinity II's objections in the hearing and in its closing brief to admitting the expert testimony of Professor Doering into evidence.[48] *See* R.D. at 15. After the CALJ evaluated ''the weight that should be accorded [to Professor Doering's] expert testimony in this matter,'' R.D. at 16 n. 51, he recommended that I give his testimony no weight because it was, in his view, ''insufficiently reliable to form the basis of a sanction under the APA.'' *Id.* at 33 (''To be clear, however, this is not an issue of credibility . . . There is no question that the Professor is an individual of impressive credentials . . . This aspect of this recommended decision addresses only the narrow issue of whether the expert opinions he rendered . . . are sufficiently reliable to support a sanction.''). Like the CALJ, I too do not need to rely upon Professor Doering's expert testimony to find that Trinity II's DEA registration must be revoked. However, unlike the CALJ, I do find that his testimony was nonetheless reliable under the APA and could have been accorded more evidentiary weight in his recommended fact findings.[49]

The CALJ identified six[50] reasons for his recommendation not to rely on Professor Doering's testimony, and the Government filed Exceptions in response to each of them. *First,* the CALJ believed that Professor Doering's supposed ''acknowledgment that the opinions he had rendered were not 'based on sufficient facts or data' critically undermines the weight that can be attached to those opinions.''[51]

[48] Trinity II objected to the admission of Professor Doering's expert testimony on the basis that ''[h]e does not currently have a license in effect in the State of Florida'' (Tr. 840) based on Professor Doering's testimony that his license had fallen into delinquent status for a couple of months as of the date of the hearing. *Id.* at 822–23, 1770. He stated that ''when the decks are cleared with this matter . . . I will clear up the delinquent status of my license, and it will revert to clear and active, before it goes to null and void.'' *Id.* at 844. He stated that this fact had no impact on his ability to work at the University of Florida's School of Pharmacy because he was only required to maintain an active pharmacist's license in one state, and he had an active license in North Carolina. *Id.* at 821–23. Even if Professor Doering had no license in any state, however, DEA regulations do not require an expert witness to be licensed in the state in which the alleged violations occurred, and Agency precedent authorizes ALJ's to admit expert testimony even where the expert was not licensed in the state where the violations were alleged to have occurred. 21 CFR 1316.59(b) (''Opinion testimony shall be admitted when the presiding officer is satisfied that the witness is properly qualified''); *Grider Drug #1 & Grider Drug #2,* 77 FR 44070, 44093 n.73 (2012) (finding that the Government's expert, who was licensed in Ohio but not Kentucky was nonetheless permissible and ''generally reliable and probative of whether Respondents (and their pharmacists) violated their corresponding responsibility''). Thus, the CALJ properly accepted Professor Doering ''as an expert in the practice of pharmacy in the State of Florida and the standard of care in the dispensing of controlled substances in Florida'' based on his expertise and the fact that he stays current in this area of expertise. *Id.* at 843; R.D. at 14. For the same reasons, I find that the fact that Professor Doering's CV may not have been up-to-date regarding the status of his Florida license is an insufficient basis to find that his testimony was unreliable. *See* R.D. at 28–30.

[49] The CALJ states that ''the factual findings set forth in this recommended decision are entitled to significant deference.'' R.D. at 38 (citing *Universal Camera Corp.* v. *NLRB,* 340 U.S. 474, 496 (1951)). However, nowhere does *Universal Camera* (or the APA) support this standard of review for the CALJ's recommended fact findings. Rather, it is axiomatic that an ALJ's recommended decisions are subject to *de novo* review by the agency. *See* 5 U.S.C. 557(b) (''On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.''); *Universal Camera,* 340 U.S. at 492, 493 (the ALJ's recommended fact findings become part of the administrative record, just ''as the complaint or the testimony'' is part of the record, for the Agency's consideration), 494 (the APA states ''that an agency which reviews an examiner's [*e.g.,* ALJ's] report has 'all the powers which it would have in making the initial decision'''') (quoting 5 U.S.C. 557(b)); *Vineland Fireworks* v. *ATF,* 544 F.3d 509, 514 (3d Cir. 2008) (recognizing an agency's authority under the APA to ''exercise[ ] de novo review over the ALJ's decision''). ALJs are ''entirely subject to the agency on matters of law; they can be reversed by the agency on matters of fact, even where demeanor evidence is an important factor.'' Antonin Scalia, *The ALJ Fiasco—A Reprise,* 47 Univ. Chi. L. Rev. 57, 62 (1979). *See Kay* v. *FCC,* 396 F.3d 1184, 1189 (D.C. Cir. 2005) (the agency may disagree with an ALJ's factual findings, including credibility determinations); Tom C. Clark, *Attorney General's Manual on the Administrative Procedure Act* 83 (1947) (''In making its decision, whether following an initial or recommended decision, the agency is in no way bound by the decision of its subordinate officer; it retains complete freedom of decision—as though it had heard the evidence itself.'').

[50] The CALJ raised two other reasons to challenge the expert's reliability, one of which was the issue of DEA–6s, which I addressed *supra.* The other related to the CALJ's disagreement with Professor Doering on the question of whether an early fill calculation relates to when the pharmacist fills the prescription or to when the customer ultimately obtains the controlled substance. R.D. at 24–26. I find that this is a legal question and not a question of witness reliability, and it is one that I address *infra.*

[51] R.D. at 16 (quoting Fed. R. Evid. 702(b)). Although the CALJ properly framed the issue of reliability under § 556(d) as a question of how much weight to give to Professor Doering's expert opinions, the CALJ erroneously resorted to Federal Rule of Evidence 702 as the lens through which to make this determination. *Id.* at 14–15, 16 n.51. The CALJ stated that the ''Agency has long authorized resort to the Federal Rules of Evidence 'where they do not conflict with Agency regulations.'' *Id.* at 14–15 (citing *Rosalind A. Cropper, M.D.,* 66 FR 41040, 41041 (2001)). In *Cropper,* the Agency expressly rejected the ALJ's evidentiary ruling that the Federal Rules of Evidence ''generally apply'' to DEA administrative hearings and found ''instead that the Federal Rules of Evidence (FRE) do not apply directly to these proceedings . . . but may be used for guidance, where they do not conflict with

R.D. at 16. Specifically, the CALJ states that Professor Doering ''did not have all of the information that was necessary for him to render an expert opinion.'' *Id.* (citing Tr. 2186–87). In its Exceptions, the Government responds that a ''careful and thorough review'' of the hearing transcript ''shows that the Presiding Officer's [52] finding is a mischaracterization of Professor Doering's testimony.'' Gov. Except. at 13. I agree.

During the portion of cross-examination cited by the CALJ, it is clear that when Professor Doering testified that he ''d[id]n't know that [he'd] been provided enough information . . . to render'' expert opinions under the Florida standard of care regarding Trinity II's resolution of red flags was limited to prescriptions and customers where he did not have a corresponding patient profile. Tr. 2186–87, 2187; *accord* Gov. Except. 14–15. The record is clear that Professor Doering testified that he did have sufficient information to render expert opinions related to the Government's charges pursuant to 21 CFR 1306.04(a) for the 23 patients that were the subject of the December 4, 2014 administrative subpoena and for whom he had the corresponding patient profile. *See* Tr. 1054–55, 2217, 2224.[53] For this reason, and as noted *supra,* those are the only patients whose prescription evidence I have considered in evaluating the Government's charges pursuant to 21 CFR 1306.04(a). Accordingly, I reject the CALJ's recommended finding that Professor Doering lacked sufficient facts to render his opinions with respect to those patients.

Second, the CALJ believed that Professor Doering's expert opinions were not reliable because he had not ''reliably applied'' the relevant principles and methods to the facts of the case, particularly in the context of what constitutes a ''red flag.'' R.D. at 16–17. The CALJ stated that ''nothing in his definition of a 'red flag' suggests that it is an indicator of an elevated risk of diversion, or what, if any, steps are required prior to dispensing when a red flag is present.'' *Id.* at 17 (citing Tr. 865). As a threshold matter, how Professor Doering, or any other expert, defines a red flag is irrelevant. It is the Agency, not an expert, that must decide whether facts in a particular case demonstrate that a pharmacist knowingly filled a prescription that was not issued for a legitimate medical purpose pursuant to 21 CFR 1306.04(a). In this context, the role of the expert is merely to render an opinion of whether a pharmacist's decision to fill a particular prescription given the facts of the case satisfied the state's standard of pharmacy practice—one of several factors the Agency can consider in determining whether a pharmacy violated its corresponding responsibility. And as already noted, the CALJ chose not to make *any* recommended fact findings related to the Government's charges that Trinity II violated its corresponding responsibility.

In any event, the CALJ's characterization of Professor Doering's definition of red flags is at odds with Professor Doering's actual testimony. As noted *supra,* Professor Doering testified that a red flag is ''a term that's come to be used to give examples to pharmacies of things that might indicate or suggest that prescriptions were filled outside the usual course of pharmacy practice.'' Tr. 864. He also testified that a red flag ''could be indicative of abuse or misuse,'' ''over or under compliance,'' ''drug-drug interactions,'' or a ''forged'' or ''altered'' prescription. *Id.* at 869. All of these indicators reflect what the CALJ described as ''an elevated risk of diversion.'' Indeed, Professor Doering's testimony about red flags of diversion that pharmacists must look for was consistent with what the relevant Florida Administrative Rule requires pharmacists to look for as part of their prospective drug use review. *See* Florida Administrative Code Rule 64B16–27.810. In one example, he testified that red flags indicating ''over-utilization'' of a controlled substance ''touches upon some of the other issues, which means clinical use or abuse, or diversion to some other use.'' Tr. 885–86. ''Over[-]utilization'' ''might be distributing it to other persons'' (*i.e.,* diversion to others) or ''taking too much of it.'' *Id.* at 872. Thus, Professor Doering testified that the red flags can indicate both an increased risk of diversion to others, but also a risk of clinical abuse. As I noted *supra,* he testified about many examples of red flags of diversion in a wide variety of contexts, including those set forth in Rule 64B16–27.810. *See* Gov. Except. at 18–23.

Also, as already noted, and contrary to the CALJ's characterization, Professor Doering repeatedly testified about what pharmacists should do when a red flag is present. For example, he testified that, ''before filling any prescription'' as part of the ''prospective drug utilization review, or prospective drug use review,'' pharmacists must resolve the red flags and document such resolution ''on the face of the prescription, on the rear of the prescription, or in the patient profile.'' *E.g., id.* at 882, 870–73, 881–83, 958–59.[54] Most importantly, this

agency regulations.'' 66 FR at 41041 (citing *Klinestiver* v. *Drug Enforcement Administration,* 606 F.2d 1128, 1130 (D.C. Cir. 1979) (holding that ''nothing in 21 CFR 1316.59(a) requires DEA to limit admissible testimony to that which would be acceptable in a jury trial or under the Federal Rules of Evidence'')). If the CALJ wished to deny admission of Professor Doering's testimony and exclude it from evidence, the APA only authorizes exclusion of evidence that is ''irrelevant, immaterial, or unduly repetitious.'' 5 U.S.C. 556(d); *Klinestiver,* 606 F.2d at 1130 (''The history of [21 CFR 1316.59] convinces us that DEA never intended to bind itself to a higher standard of admissibility than that prescribed by . . . 5 U.S.C. 556(d)''); *Cropper,* 66 FR at 41041 (same) (''The sections governing these proceedings found in 21 Code of Federal Regulations contain no references to the FRE; and 21 CFR 1316.59 . . . requires only that admitted evidence be 'competent, relevant, material, and not unduly repetitious.'').

Although Rule 702 does use the words ''expert'' and ''reliable,'' that does not make the rule applicable here, even as guidance, to determine how much weight to give expert testimony. The CALJ concedes that Rule 702 only provides conditions for ''the admission of expert opinion testimony.'' R.D. at 15. Indeed, Rule 702 says nothing about how much weight to give an expert's opinion once it has been admitted. For this reason, the Agency adopted the CALJ's evidentiary recommendation in *Howard N. Robinson, M.D.,* 79 FR 19356, 19361 n.39 (2014), to overrule the Government's objection based on Rule 702 to receiving an expert witness because ''the nature of the objection was framed entirely as an argument as to weight and raised no appreciable issue regarding the qualifications of the witness to present expert testimony.'' Here, and as already noted, the CALJ properly accepted admission of Professor Doering's expert opinion (Tr. 843–44) but gave it no weight because it was, in the CALJ's view, insufficiently reliable. Thus, Rule 702 has no bearing, and provides no guidance, on the question of how much weight the expert's testimony should receive.

[52] ''The term *presiding officer* means an administrative law judge qualified and appointed as provided in the'' APA. 21 CFR 1316.42(f) (citing 5 U.S.C. 556). The APA, in turn, characterizes an ALJ as a ''presiding or participating employee'' of the Agency. 5 U.S.C. 556(b). In this case, the presiding officer or employee of the Agency was the CALJ.

[53] After reviewing prescription evidence and patient profiles for over 20 of Respondents' customers and testifying that he saw no notes or comments resolving red flags of diversion with respect to those customers, Professor Doering was asked ''How many more did you need to be able to see to determine whether or not [Respondents] kept the notes and comments?'' Tr. 2217. He responded: ''Well, technically speaking I'd have to look at each and every one to be sure that they exist. I think the logical conclusion is these profiles typically don't have such a section.'' *Id.* On this basis, the Government argues that a reasonable inference could be made that Trinity II never documented resolution of red flags of diversion—even for customers for whom patient profiles were not produced. Govt. Except. at 17 & n.5. I need not make this inference here because, as set forth *infra,* the prescription evidence and patient profiles that are already part of the record in this case are more than sufficient to establish by a preponderance of the evidence that Trinity II violated its corresponding responsibility pursuant to 21 CFR 1306.04(a).

[54] As the Government notes in its Exceptions, Professor Doering testified at length about the steps that a pharmacist must follow before filling a

Continued

testimony is consistent with the Florida Administrative Rules that also require resolving red flags and documenting resolution of red flags, which Professor Doering also discussed at length. *See* Florida Administrative Code Rule 64B16–27.800; Tr. 870–71, 873–75, 881–82, 887–89, 891, 895–96, 953–55, 957–59, 1015–16, 1169–70, 1353, 1419–20. The fact that his testimony closely tracks the Florida Administrative Rules supports, rather than undermines, the reliability of his expert opinion. As a result, I reject the CALJ's belief that (1) the expert's definition of a red flag is relevant and (2) in any event, that the expert failed to define a red flag as an indicator of an elevated risk of diversion and set forth the steps a pharmacist must follow prior to filling or dispensing.

Third, the CALJ stated that Professor Doering was unreliable because the CALJ believed that Professor Doering stated that ''it is the (presumably subjective) judgment of each individual pharmacist that governs whether a red flag is adequately resolved.'' R.D. at 17. Aside from the fact that the transcript fails to reflect Professor Doering making this statement,[55] the CALJ confuses the question of whose judgment should be used in filling a prescription with the question of whether Trinity II's pharmacists' decisions to fill certain prescriptions satisfied their corresponding responsibility.[56] The notion that pharmacists must use their professional judgement when filling prescriptions is neither new nor remarkable. Agency precedent, federal law, and Florida law uniformly require pharmacists to use their professional judgment in deciding whether to fill a prescription and dispense controlled substances.[57] Accordingly, I reject the CALJ's view that Professor Doering's testimony was unreliable simply because he testified that pharmacists must use their professional judgment—a statement that is consistent with Agency precedent.[58]

Fourth, the CALJ stated his belief that ''Professor Doering's reliance upon the subjective judgment of individual pharmacists as a Florida state standard'' undermined the reliability of his testimony. R.D. at 19. The CALJ contended that Professor Doering ''conceded that pharmacists in Florida can and do disagree on whether particular red flags are resolvable,[59] when a refill constitutes an 'early refill,' when duplicative therapy is present, and whether a particular combination of medications constitutes a 'drug cocktail.' '' *Id.* (citing Tr. 1828–29, 1967). This largely academic testimony (during cross-examination) about how reasonable pharmacists may differ on where to draw the line regarding certain red flags in the abstract is interesting but not relevant to the question that Professor Doering was actually called on as an expert to answer: Whether prescriptions like the ones *in this case* presented red flags of diversion.

And regarding prescriptions like those *in this case,* Professor Doering's testimony about what the standard of practice for Florida pharmacists was regarding early fills, duplicative therapy, and ''drug cocktails'' was clear. For example, Professor Doering testified that ''early fills'' or ''early refills'' are red flags of over-utilization, and that when there is a fill or refill was more than 2–3 days early, that ''early fill'' or ''early refill'' would be a red flag. *See* Tr. 989–991, 992 (''when there is a pattern of early refills, it makes one very concerned that there is over-utilization''), 1009. Although reasonable pharmacists in Florida may disagree whether the line should be drawn at two or three days, those are not the early fills in this case. In this vein, Professor Doering testified that pharmacists would not disagree that prescriptions filled or refilled eight to 17 days early, as the prescription evidence shows Trinity II routinely did, were red flags of diversion that pharmacists in Florida must resolve before filling. *E.g.,* Tr. 1004–05, 2106–2110.

Professor Doering also testified that there would be no disagreement among reasonable pharmacists that when a patient simultaneously presents prescriptions for the ''drug cocktail'' of an opioid, a benzodiazepine, and a muscle relaxant, then this is a red flag that a Florida pharmacist must resolve. *Id.* at 2111. Likewise, he testified that when the same customer simultaneously presents two prescriptions for different immediate-release opioids with the same or similar instructions, this too is a red flag of duplicative therapy that a pharmacist must resolve before filling. *Id.* Notably, Professor Doering's testimony is consistent with the same standard of care requirements set forth in Florida Administrative Rule 64B16–27.810—a fact that bolsters the reliability of his expert opinion. *See* ALJ Ex. 38. Accordingly, I reject the CALJ's belief that Professor Doering's testimony about the prescriptions in this case was unreliable.

Fifth, the CALJ found Professor Doering's testimony unreliable because he failed to take into account the ''E–

controlled substance prescription presenting a red flag of diversion. Govt. Except. at 25–26. He testified that resolving the red flag during ''[d]rug utilization review means using the knowledge, skill, judgment, and experience of the pharmacist to evaluate all the information that might be in front of them regarding the use of this particular prescription, under this particular prescription, in this particular patient.'' Tr. 870–71. He testified that this review ''would mean consulting the patient profile, which might have a list of other drugs that a patient may be on[,] . . . a list of allergies or other adverse effects that patients may have had from the drug. It may have other idiosyncrasies[,] . . . [it] might have important demographic information, such as [an] address . . . information indicating other doctors, who may have or are seeing this very patient. It would also have information on dates of fills or refills, looking for . . . perhaps over[-]utilization of the medication.'' *Id.* at 871. He also testified that pharmacists should resolve red flags by reviewing the notes and comments field of the patient profile, consulting with the patient and/or the prescribing physician, and consulting Florida's Prescription Drug Monitoring Program, ''E-FORCSE.'' *Id.* at 873–74, 887–89, 895–96, 953–55, 957, 1015–16, 1419–20.

[55] As the Government states, ''[t]he Presiding Officer simply read the word 'subjective' into Professor Doering's testimony when it did not exist.'' Govt. Except. at 27.

[56] On the latter question, the CALJ also expressed confusion about whether Professor Doering was ''speaking from the shoes of the pharmacists'' or from his view of ''looking from the shoes of the expert'' in determining what the Florida standard of practice should be in resolving red flags. R.D. at 17 (quoting Tr. 881). However, the record is clear that Professor Doering testified that his opinion was that Florida law applicable to all pharmacists governs whether a pharmacist adequately resolved a red flag before filling a prescription. *See, e.g.,* Tr. 868–79.

[57] *See, e.g., Ralph J. Bertolino,* 55 FR 4,729, 4,730 (1990) (''The statutory scheme plainly requires that pharmacists use common sense and professional judgment. Where [pharmacists'] suspicions are aroused as reasonable professionals . . . pharmacists are called upon to obey the law and refuse to dispense.''); *id.* (''When [pharmacists'] suspicions are aroused as reasonable professionals,'' they must at least verify the prescription's propriety, and if not satisfied by the answer they must ''refuse to dispense''); *Medicine Shoppe-Jonesborough,* 300 Fed. Appx. 409, 412 (6th Cir. 2008) (same) (quoting *Bertolino*); *United States* v. *Hayes,* 595 F.2d 258, 261 (5th Cir. 1979) (''What is required by [a pharmacist] is the responsibility not to fill an order that purports to be a prescription but is not a prescription within the meaning of the statute because he knows that the issuing practitioner issued it outside the scope of medical practice''); Florida Bd. of Pharm. R. 64B16–27.810 (requiring a pharmacist ''upon recognizing any of the [issues]'' to ''take appropriate steps to avoid or resolve the potential problems which shall, if necessary, include consultation with the prescriber'').

[58] In its Exceptions, the Government also notes that ''the Presiding Officer's finding is largely immaterial in this case because the evidence established that Respondents' pharmacists did not exercise any judgment at all with respect to the prescriptions containing red flag(s).'' Govt. Except. at 29. Given that I have already found facts establishing that Trinity II failed to document or otherwise establish that its pharmacists resolved red flags of diversion before filling prescriptions, *see infra,* the Government's point is well-taken.

[59] *See also* R.D. at 26–27. The CALJ's concern regarding Professor Doering's testimony about ''whether particular red flags are resolvable'' is particularly irrelevant where, as here, I have limited my fact findings to customers where the Government established by a preponderance of the evidence that Trinity II failed to document that it resolved *any* red flags of diversion.

FORSCE'' printouts that the DIs had provided to him before rendering his opinions. R.D. at 22 (''although he testified that checking E–FORSCE is a necessary step in the process for the pharmacist, he rendered his opinions without taking into consideration any E–FORSCE printouts that were provided to him'' and would ''arguably have been relevant in reaching a determination as whether a bona fide red flag was actually present''). While the CALJ contends that E–FORSCE printouts for specific Trinity II customers would have ''arguably'' been relevant in identifying a red flag,[60] the CALJ failed to identify any prescription *in this case* where it would have been relevant to identifying a red flag.[61]

Moreover, the Government noted in its Exceptions that the CALJ failed to point out that Professor Doering never received E–FORSCE printouts for specific Trinity II customers—the printouts the CALJ opined would have been relevant to his opinions. Gov. Except. at 39; Tr. 553 (DI testified that he ''did not run a specific [E–FORSCE] query for each patient''). Instead, the DIs only provided Professor Doering with E–FORSCE printouts of the prescriptions filled by Trinity II, which was already reflected in (and hence redundant to) Trinity II's own prescriptions, dispensing reports, and patient profile. *See* Tr. 605 (DI testifying that ''[w]e try not to use E–FORSCE, we prefer to use the dispensing report because it's a more accurate reflection of the pharmacies. Because it's their records. It's what they have in their system.''). Thus, I reject the CALJ's belief that Professor Doering's failure to take into account the E–FORSCE printouts of the prescriptions filled by Trinity II made his testimony unreliable. He correctly based his opinions, instead, on the prescriptions, dispensing reports, and patient profiles on which those E–FORSCE printouts depend.

Sixth, the Government objected to the CALJ's belief that Professor Doering was unreliable because ''he was consistently unable to accurately calculate the number of days between two filled prescriptions, even though supplied on the witness stand with a calendar, a pad, a pencil, as much time as he needed, and repeated prompting and re-prompting by the Government.'' R.D. at 23. Even assuming, *arguendo,* that the CALJ's belief is correct, the CALJ failed to explain why it has any bearing on whether Professor Doering's expert opinions are reliable. Professor Doering testified that his trouble in making these calculation by hand, on the stand, stems from the fact that today's pharmacists rely on a computer to make them automatically. Tr. 1368.[62] More importantly, the calculation of ''the number of days between two filled prescriptions'' is a question of fact, not of expert opinion.[63] Thus, even if Professor Doering had little trouble making these calculations, it would not have obviated the Agency's independent requirement to make or to verify them as fact. *Cf.* Gov. Except. at 40 (''the Administrator does not even need Professor Doering's calculations to ascertain whether the prescriptions were early''). As already noted, the CALJ failed to make any recommended fact findings regarding the early fill allegations in this case, much less findings that conflicted with those made by Professor Doering. Thus, I reject the CALJ's belief that Professor Doering was unreliable based on his early fill calculations at the hearing.

Finally, Trinity II contends that if the Agency were to find Professor Doering unreliable in this case, then it would call into question the CALJ's previous finding in *Holiday CVS* that his consistent expert testimony there *was* reliable and accorded evidentiary weight. *E.g.,* ALJ Ex. 41, at 20 (''*Holiday CVS* and its progeny all find their basis in the testimony of Doering.''), 20 n.5 (''[I]n the event the Court finds Doering's testimony to be not credible or appropriate to rely upon, it likewise calls into question the validity of *Holiday CVS* due to its reliance on his testimony. The effect would be akin to removing a bottom floor card in a house of cards.'').[64] In response, the CALJ states that the ''Agency's legal conclusions in its prior final orders stand unaffected by a decision regarding the weight that should be accorded expert testimony in this matter; likewise, expert testimony reflected in prior final orders has no place in an evaluation of the evidence in this matter.'' R.D. at 15–16 n.51. Insofar as the Agency's legal conclusions in prior final orders depend on expert testimony that is inconsistent with Professor Doering's testimony in this case, I agree with the CALJ that the legal conclusions in those cases are not called into question.

However, I disagree with the CALJ's claim that expert testimony accepted in prior final orders has no place in evaluating the weight to be given to expert testimony in this matter. Where Professor Doering's testimony in this case is consistent with expert testimony previously found reliable by the Agency, then I do find that prior consistent testimony relevant to an evaluation of the reliability of Professor Doering's testimony in this case. Here, for example, the Government contends that his ''testimony about the drug

[60] The CALJ concedes that ''this aspect of the case certainly has no impact on whether the pharmacists' attempts at red flag resolution were adequately documented.'' R.D. at 22. In that vein, the Government observed that ''the issue the Presiding Officer should have focused on was the fact that Respondents' pharmacists were not checking E–FORSCE to resolve the red flags that were seen in the prescriptions themselves (as well as the patient profiles and dispensing reports), as evidenced by the lack of any documentation on the prescriptions and the patient profiles of E–FORSCE queries.'' Govt. Except. at 40 n.9.

[61] Indeed, even if Professor Doering had received E–FORSCE printouts for specific Trinity II customers, they would not have rendered red flags presented by the actual prescriptions less suspicious. On the contrary, if anything, they may have shown additional red flags—such as doctor-shopping—that may not have been presented by the prescription evidence already in the case.

[62] The following exchange at the hearing makes this point clear:

Judge Mulrooney: . . . Would you say that it's difficult to count up these days as a pharmacist, particularly if you're in a busy retail pharmacy?

[Professor Doering]: It's not difficult at all. Number 1, the computer does it for you. Number 2, they're not under the bright lights, under the stress of what I am. Although I may appear to be calm and cool, this is a stressful thing for me.

Tr. 1368. At this point, Professor Doering had already been testifying continuously for almost two days.

In addition to the pressure of testifying on the stand, Professor Doering appeared to suffer from witness fatigue, having testified for several days in a row in response to a similar pattern of questions during direct examination over and over again. For this reason, it is not surprising that this fatigue caused him to misstate whether he had certain documents in one instance, and to respond in ''automatic mode'' in another instance. *See* R.D. at 30–33. It is not uncommon for a witness who testifies for most of 5 days (as reflected in more than 1,400 pages of an almost 2,400-page transcript) to make an accidental misstatement. While the CALJ could reasonably find particular erroneous testimony unreliable based on such mistakes, it would not be reasonable to find the entirety of Professor Doering's testimony unreliable under the APA on this basis.

[63] In its Exceptions, the Government further noted that the fact that Professor Doering needed more than one attempt to make a particular calculation in the examples cited by the CALJ (R.D. at 23–24) does not change the Government's allegation that the prescriptions at issue ''were extremely early, in most instances anywhere from 8 to 15 days early, and Professor Doering reliably testified that they were each early.'' Govt. Except. at 40. I agree, and as I note *infra,* what is important is the fact that most (if not all) of the relevant fills and refills are so early that Trinity II should have resolved these red flags before filling the prescriptions.

[64] Trinity II's argument implies that allowing the CALJ to find the same expert testimony reliable in one case (*Holiday CVS*), yet unreliable in this case, calls into question whether such findings are arbitrary and capricious. Although I agree with Trinity II and the Government that some of Professor Doering's testimony in *Holiday CVS* is consistent with his testimony in this case, I do not consider whether the CALJ's inconsistent reliability findings are arbitrary and capricious because I find, consistent with the CALJ's finding in *Holiday CVS,* that Professor Doering's testimony in this case is reliable.

utilization review obligations of a pharmacist'' regarding early fills ''was consistent with the expert testimony that has been credited by [the] Agency in previous final decisions.'' ALJ Ex. 40a, at 73 (citing *Grider #1 & Grider #2* and *East Main Street Pharmacy*), 86 (Professor Doering's testimony regarding the early fills in this case ''was consistent with the testimony of other experts in Agency precedent'') (citing *Grider #1 & Grider #2* and *The Medicine Dropper*), 104 (Professor Doering's testimony regarding therapeutic duplication ''was again consistent with the testimony of another pharmacist expert that was credited by the Agency in a previous decision'') (citing *Grider #1 & Grider #2* and *Medicine Shoppe Jonesborough*). Given Trinity II's further claim that Professor Doering's testimony is consistent with his own accepted testimony in *Holiday CVS* ''and its progeny,'' the fact that Professor Doering's testimony in this case is consistent with accepted expert testimony in the Agency's prior decisions is not in dispute. I find that this undisputed fact bolsters the reliability of Professor Doering's expert testimony—further undermining the CALJ's determination that in this case his testimony is not reliable.

Accordingly, for all the foregoing reasons, I find that Professor Doering's expert testimony in this case was reliable under the APA.

The Public Interest Factors

Under the Controlled Substances Act (''CSA''), ''[a] registration pursuant to section 823 of this title to manufacture, distribute, or dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). In the case of a retail pharmacy, which is deemed to be a practitioner, *see id.* § 802(21), Congress directed the Attorney General to consider the following factors in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant'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.

Id. § 823(f).

''[T]hese factors are . . . considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). It is well settled that I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[ ] appropriate in determining whether'' to suspend or revoke an existing registration. *Id.; see also MacKay* v. *DEA,* 664 F.3d 808, 816 (10th Cir. 2011); *Volkman* v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222); *see also Hoxie,* 419 F.3d at 482.[65]

Under the Agency's regulation, ''[a]t any hearing for the revocation or suspension of a registration, the Administration shall have the burden of proving that the requirements for such revocation or suspension pursuant to . . . 21 U.S.C. [§]824(a) . . . are satisfied.'' 21 CFR 1301.44(e). In this matter, while I have considered all of the factors, the Government's evidence in support of its *prima facie* case is confined to factors two and four.[66] I find that the record taken as a whole provides substantial evidence that Trinity II's pharmacists violated their corresponding responsibility pursuant to 21 CFR 1306.04(a) when they dispensed many of the prescriptions at issue. I also find that the Government has established by substantial evidence that Trinity II's pharmacists filled prescriptions outside the usual course of their professional practice in violation of 21 CFR 1306.06.

Accordingly, I conclude that the Government has established that Trinity II committed numerous acts which render its continued ''registration inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). Because I further agree with the ALJ's finding that Trinity II has not accepted responsibility for its misconduct, I also agree with the ALJ that it has not rebutted the Government's *prima facie* showing. Because I find that Trinity II's misconduct is egregious, I will order that Trinity II's registration be revoked and that any pending application be denied.

Factors Two and Four—The Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

The Allegations Pursuant to 21 CFR 1306.04(a)

''Except as authorized by'' the CSA, it is ''unlawful for any person [to] knowingly or intentionally . . . manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.'' 21 U.S.C. 841(a)(1). Under the Act, a pharmacy's registration authorizes it ''to dispense,'' *id.* § 823(f), which ''means to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, a practitioner, including . . . the packaging, labeling, or compounding necessary to prepare the substance for such delivery.'' *Id.* § 802(10). ''The terms 'deliver' or 'delivery' mean the actual, constructive, or attempted transfer of a controlled substance.'' *Id.* § 802(8). Thus, a pharmacy dispenses a controlled substance when it attempts to transfer a controlled substance to an ultimate user pursuant to a lawful

[65] In short, this 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; what matters is the seriousness of the registrant's or applicant's misconduct. *Jayam Krishna-Iyer,* 74 FR 459, 462 (2009). Accordingly, findings under a single factor can support the revocation of a registration or denial of an application. *See MacKay,* 664 F.3d at 821.

[66] As to factor one, there is no evidence that the Florida Department of Health has either made a recommendation to the Agency with respect to Trinity II, or taken any disciplinary action against it. *See* 21 U.S.C. 823(f)(1). However, even if true, this finding is not dispositive of the public interest inquiry. *See Mortimer Levin,* 57 FR 8680, 8681 (1992) (''[T]he Controlled Substances Act requires that the Administrator . . . make an independent determination [from that made by state officials] as to whether the granting of controlled substance privileges would be in the public interest.''). Accordingly, this factor is not dispositive either for, or against, the revocation of Trinity II's registration. *Paul Weir Battershell,* 76 FR 44359, 44366 (2011) (citing *Edmund Chein,* 72 FR 6580, 6590 (2007), *pet. for rev. denied, Chein* v. *DEA,* 533 F.3d 828 (DC Cir. 2008)).

As to factor three, there is no evidence that Respondent, its owner, its manager, or any of its pharmacists, has been convicted of an offense under either federal or Florida law ''relating to the manufacture, distribution or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Dewey C. MacKay,* 75 FR 49956, 49973 (2010), *pet. for rev. denied, MacKay* v. *DEA,* 664 F.3d 808 (10th Cir. 2011).

The Government did allege, in the alternative in the Show Cause Order's eighth charge, misconduct with respect to factor five regarding Trinity II's filling and dispensing of a controlled substance in an amount that was at least five times the amount prescribed. Because I consider this evidence in evaluating factors two and four, I deem it unnecessary to separately address this misconduct under factor five.

prescription by packaging or labeling a controlled substance for such delivery.

The CSA's implementing regulations set forth the standard for a lawful controlled substance prescription. 21 CFR 1306.04(a). Under the regulation, ''[a] prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' *Id.* Thus, '' 'a practitioner is unauthorized to dispense a controlled substance if the prescription *either* lacks a legitimate purpose *or* is outside the usual course of professional practice.' '' *United States* v. *Bennett,* 874 F.3d 236, 245 (5th Cir. 2017) (quoting *United States* v. *Armstrong,* 550 F.3d 382, 397 (5th Cir. 2008), *overruled on other grounds by United States* v. *Balleza,* 613 F.3d 432, 433 n.1 (5th Cir. 2010)). Continuing, the regulation provides that:

> [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.* 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 of the Act (21 U.S.C. 829) and the person *knowingly filling* such a purported prescription . . . shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.[67]

Id. (emphasis added). Thus, 1306.04(a) distinguishes between ''prescribing and dispensing'' and ''filling'' controlled substances, and who has responsibility for each function. Under this regulation, prescribing physicians are responsible for the ''proper prescribing and dispensing of controlled substances,'' and pharmacists bear a corresponding responsibility for ''filling'' only lawful prescriptions issued for a legitimate medical purpose.

As the Agency has made clear, to prove a violation of a pharmacist's corresponding responsibility, the Government must show that the pharmacist acted with the requisite degree of scienter, *i.e.,* that the pharmacist ''knowingly'' filled a prescription that was not issued for a legitimate purpose. *See JM Pharmacy Group, Inc., d/b/a Farmacia Nueva and Best Pharma Corp.,* 80 FR 28667, 28669 (2015). Thus, the Government can prove a violation by showing either that the pharmacist filled a prescription (1) notwithstanding his/her actual knowledge that the prescription lacked a legitimate medical purpose, or (2) being willfully blind to (or deliberately ignorant of) the fact that the prescription lacked a legitimate medical purpose. *See id.* at 28671–72. As to establishing that a pharmacist acted with ''willful blindness, proof is required that: '(1) the defendant must subjectively believe that there is a high probability that a fact exists and (2) the defendant must take deliberate actions to avoid learning of that fact.' '' *Id.* at 28672 (quoting *Global-Tech Appliances, Inc.,* v. *SEB S.A.,* 563 U.S. 754, 769 (2011)).[68]

Here, the Government makes no claim that any of Trinity II's pharmacists dispensed the prescriptions having actual knowledge that the prescriptions lacked a legitimate medical purpose. Instead, relying primarily on *Holiday CVS, L.L.C., d/b/a CVS/Pharmacy Nos. 219 and 5195,* 77 FR 62316, 62341 (2012), the Government argues that a pharmacist violates the corresponding responsibility rule when he/she fills a controlled substance prescription (1) in the face of ''red flags'' or circumstances that do or should raise a reasonable suspicion as to the validity of a prescription and (2) without taking steps to resolve the red flag and ensure that the prescription is valid. ALJ Ex. 40a, at 66–68. In this case, the Government argues that Trinity II's pharmacists violated 21 CFR 1306.04(a) by filling prescriptions for drugs such as oxycodone and hydromorphone, even though Trinity II's pharmacists knew that these prescriptions presented various ''red flags'' of diversion which were never resolved. *Id.* at 68.

Notably, Florida law requires pharmacists to identify and resolve certain red flags for every prescription presented to them during a prospective drug use review. Florida Administrative Code Rule 64B–16–27.810, entitled ''Prospective Drug Use Review,'' requires pharmacists to ''review the patient record and each new and refill prescription presented for dispensing in order to promote therapeutic appropriateness.'' ALJ Ex. 38 (Fla Admin Code r. 64B16–27.810(1)). This rule further requires that a pharmacist identify such issues as: ''[o]ver-utilization,'' ''[t]herapeutic duplication,'' ''[d]rug-drug interactions,'' ''[i]ncorrect drug dosage or duration of drug treatment,'' and ''[c]linical abuse/misuse.'' *Id.*

Importantly, ''[u]pon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the potential problems which shall, if necessary, include consultation with the prescriber.'' *Id.* at 64B16–27.810(2). Thus, Trinity II's pharmacists violate Florida law if they fail to identify and resolve the red flags that are part of the prospective drug use review set forth in Rule 64B16–27.810. And if they knowingly fill prescriptions without resolving these red flags during this review, then they violate their corresponding responsibility under 21 CFR 1306.04(a). *See, e.g., Grider Drug #1 & Grider Drug #2,* 77 FR at 44097–98, 44100 (pharmacies violated their corresponding responsibility because they ''did not do prospective DUR [drug utilization review] with respect to any of the six patients even though this is required by the Kentucky Board of Pharmacy's rules''); *East Main Street Pharmacy,* 75 FR at 66157 & n.31 (pharmacists required to recognize and consider red flags as part of the prospective drug utilization review ''before they dispense a prescription'').

Moreover, at all times relevant to this case, Florida law also required pharmacists to document resolution of a red flag. Rule 64B16–27.800[69] required that ''[a] patient record system . . . be maintained by all pharmacies for patients to whom new or refill prescriptions are dispensed'' and that the ''system shall provide for the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed drugs at the time a new or refill prescription is presented for dispensing.'' Fla. Admin. Code r. 64B–16–27.800. This rule also required that the pharmacy maintain ''[a] list of all new and refill prescriptions obtained by the patient at the pharmacy . . . during the two years immediately preceding the most recent entry'' and include the ''prescription number, name and strength of the drug, the quantity and date received, and the name of the prescriber.'' *Id.* at 64B–16–27.800(1)(e).

Most significantly, the rule required that the record include the

[67] As the Supreme Court has explained, ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, the provision also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135, 143 (1975)).

[68] Courts have long held that when prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby deliberately avoid actual knowledge of the real purpose of the prescription, thereby filling them with impunity. *See United States* v. *Kershman,* 555 F.2d 198 (8th Cir. 1977). *See also United States* v. *Lawson,* 682 F.2d 480 (4th Cir. 1982) (''The key element of knowledge may be shown by proof that the defendant deliberately closed his eyes to the true nature of the prescription'').

[69] Because the prescriptions at issue in this case are dated from February 2012–February 2014, I apply the version of Rule 64B16–27.800 that applied prior to its amendment on March 18, 2015.

''[p]harmacist['s] comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.'' *Id.* at 64B–16–27.800(1)(f). And the rule also required that the pharmacist make ''a reasonable effort . . . to obtain from the patient . . . and record any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs . . . being used by the patient which may relate to prospective drug review,'' *id.* at 64B–16–27.800(2), which is the ''prospective drug use review'' for red flags required by 64B–16–27.810. Finally, the rule required that ''[t]he pharmacist . . . record any related information indicated by a licensed health care practitioner.'' *Id.* at 64B–16–27.800(2). All of these ''patient record[s]'' must be ''maintained for a period of not less than two years from the date of the last entry in the profile record.'' *Id.* at 64B–16–27.800(4).

Thus, Florida's laws specifically require a pharmacist to document in the patient record his/her comments relevant to the patient's drug therapy and ''other information peculiar to the patient'' or drug, as well as ''any related information'' provided by the patient's physician in the patient's ''profile record.'' Although such patient records provide relevant evidence in assessing whether a pharmacist resolved the suspicion created by the prescriptions at issue here, the Government only obtained and introduced patient profiles related to the 23 Trinity II customers identified in its December 4, 2014 subpoena. GX 98.[70] As noted *supra,* the Government established by a preponderance of the evidence that Trinity II's pharmacists failed to resolve red flags regarding these patients because the prescriptions, dispensing logs, and patient profiles contained no documentation that Trinity II resolved the red flags of diversion presented by these customers' prescriptions. As a result, I further find that the Government established by a preponderance of the evidence that Trinity II's pharmacists filled at least some of the prescriptions knowing that they lacked a legitimate medical purpose.

For example, the evidence shows that Trinity II knowingly filled controlled substances prescriptions well before the customer should have exhausted the supply obtained from a previous prescription filled by Trinity II. For one customer, J.T., Trinity II filled prescriptions for oxycodone 30 mg 14–16 days early on nine occasions in each of nine consecutive months—resulting in a cumulative effect of Trinity II filling and delivering[71] 135 extra days of oxycodone 30 mg (the equivalent of 1,080 extra tablets) for J.T. from March 2012–November 2012. While it is conceivable that a single early fill of a customer's prescription could be an unwitting mistake (albeit, at 16 days, a significant one) by one of Trinity II's pharmacists, it is not remotely credible that Trinity II could innocently repeat the same mistake nine times in nine consecutive months without knowing that the prescriptions lacked a legitimate medical purpose. Trinity II's pharmacists made no notes or comments on the front or back of these prescriptions, in the dispensing log, or in the patient profile explaining why J.T. should receive 135 extra days of oxycodone 30 mg. This lack of any explanation further highlights Trinity II's willingness to ignore the fact that J.T.'s early prescriptions lacked a legitimate medical purpose. This evidence of diversion of 135 extra days of a schedule II drug like oxycodone is so egregious that I find that it is more than sufficient to establish by a preponderance of the evidence that Trinity II's pharmacists were willfully blind[72] to the fact that J.T.'s prescriptions lacked a legitimate medical purpose when its pharmacists filled them 14–16 days early in each of nine consecutive months. On this basis alone, I find that Trinity II violated its corresponding responsibility under 21 CFR 1306.04(a). Indeed, the Agency has previously found violations of the corresponding responsibility when pharmacists knowingly filled prescriptions less than 15 days early.[73]

Trinity II's pattern of early fills and refills was not limited to one customer. The evidence establishes that Trinity II filled prescriptions for customer M.A. for hydromorphone 8 mg six to seven days early on eight occasions in eight consecutive months—resulting in the cumulative effect of Trinity II filling and providing 50 extra days of hydromorphone 8 mg for M.A. from May 2013-December 2013. Trinity II also filled a prescription for customer J.G. for lorazepam 2 mg nine days early on May 28, 2013. In addition, Trinity II filled and refilled J.G.'s prescriptions for Xanax 2 mg early on six occasions between October 10, 2012 and June 12, 2013—five days early, six days early, eight days early, 10 days early (twice), and 17 days early. The evidence also establishes that Trinity II filled prescriptions for customer L.H. for hydromorphone 8 mg eight days early on June 28, 2012 and nine days early on July 3, 2012.[74] As with customer J.T., Trinity II's failure to document anywhere on the relevant prescriptions, dispensing logs, or patient profiles why M.A., J.G., or L.H. should receive early fills and refills of these controlled substances further underscores Trinity II's pharmacists' knowledge that they were filling illegitimate prescriptions and violating their corresponding responsibility under 21 CFR 1306.04(a).

In his Recommended Decision, the CALJ declined to find that Trinity II violated its corresponding responsibility under § 1306.04(a) based on these early fills because of his belief that the determination of when a fill occurred must be based on ''the date when the customer picked up their medications,'' not when Trinity II filled the prescriptions. R.D. at 25. ''An early refill only logically bears upon this consideration [of over-utilization or under-utilization] at the moment the medication is being dispensed to the patient, not when a [fill] sticker is prepared by the pharmacy.'' *Id.* The CALJ offered the following explanation:

> While there may be some logical appeal to the principle that some or most of the steps required in a valid prospective drug use review should (and generally will) be completed prior to the preparation of the pharmacy fill sticker, no shred of that rationale could logically be applied to justify deeming the fill sticker preparation date as

[70] In *Superior Pharmacy I and II,* I found the Government's evidence, which was limited to the prescriptions (which contained no documentation that the red flags were resolved) and its Expert's testimony, insufficient to establish that the pharmacists violated their corresponding responsibility. 81 FR 31310 (2016).

[71] Given that J.T. came back on a monthly basis, it is a reasonable inference that the drugs were actually delivered to him.

[72] Moreover, this evidence would likely be sufficient to show that Trinity II had actual knowledge that these prescriptions lacked a legitimate medical purpose. However, the Government did not allege that Trinity II had such actual knowledge, making such a finding unnecessary.

[73] *E.g., Grider Drug #1 and Grider Drug #2,* 77 FR at 44098 (finding a violation of the corresponding responsibility where the refills for one patient were ''more than five days early, and some as much as nine to twelve days early''); *East Main Street Pharmacy,* 75 FR 66149, 66159 (2010) (accepting expert opinion that a refill of controlled substance ''two weeks early'' is a ''blatant example[ ] of abuse and diversion''); *cf. Jeri Hassman,* 75 FR 8194, 8201, 8229, 8231 (2010) (finding prescriptions were not for a legitimate medical purpose where approximately half of the controlled substance ''prescriptions were refilled five days early, with some being refilled as early as eight or nine days before the previous prescription would have run out'').

[74] These are only the most egregious examples of early filling of controlled substances by Trinity II in violation of its corresponding responsibility under § 1306.04(a). As I described in my fact findings, Trinity II also filled a prescription for Dilaudid 8 mg nine days early for customer D.E. without explanation.

equivalent to the date that a medication was dispensed (delivered/transferred) to a patient for early refill purposes.

Id. The CALJ cites to no authority (and I am aware of none) for the proposition that the date when the customer actually receives the controlled substance should be used to determine whether a pharmacy's early fill of a prescription violates its corresponding responsibility under 21 CFR 1306.04(a).[75]

Most importantly, the notion that the fill date is equivalent to the pick-up date is belied by § 1306.04(a)'s plain language, which states in pertinent part:

> A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The 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.* 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 of the Act (21 U.S.C. 829) and the person *knowingly filling* such a purported prescription . . . shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

Id. (emphasis added). Section 1306.04(a) expressly *requires* pharmacists to identify and resolve suspicions that a prescription is illegitimate (like a prescription presented too early) before ''knowingly filling such a purported prescription.'' It does not allow a pharmacist to delay completing a prospective drug use review to confirm a suspicious prescription's legitimacy until ''a medication was dispensed (delivered/transferred) to a patient''—an event that necessarily occurs after the pharmacist has ''filled'' the prescription and which may even occur without the pharmacist's involvement at all. *See* R.D. at 25.[76] Such a rule would lead to the nonsensical result of allowing pharmacists to knowingly fill controlled substance prescriptions lacking a legitimate purpose so long as the pharmacist had not yet actually delivered them to the customer—directly contradicting § 1306.04(a)'s express prohibition.

And to the extent the CALJ's view is based on the notion that ''fill'' means ''dispense,'' or that the two terms are otherwise interchangeable, § 1306.04(a)'s plain language precludes that notion as well. Specifically, § 1306.04(a) distinguishes a prescribing practitioner's ''responsibility for the proper *prescribing and dispensing* of controlled substances'' only for a legitimate medical purpose from the pharmacist's corresponding responsibility not to ''knowingly *fill*[ ]'' prescriptions that lack a legitimate medical purpose. Filling constitutes part of the process of dispensing, but the CALJ cites to no decision of the Agency (and I am aware of none) holding that filling encompasses every part of the dispensing process, including the actual delivery to the ultimate user. If ''dispensing'' and ''filling'' shared the same meaning, then the Agency would not have used two different terms in the same regulation to describe prescribing practitioners' and pharmacists' respective responsibilities. Instead, the Agency would have simply used the term ''dispense'' to apply to both practitioners and pharmacists throughout the regulation. Thus, I reject the notion that under § 1306.04(a), the term ''fill'' is coextensive with the term ''dispense,'' which includes the delivery of a controlled substance.

Just as the operative date for determining whether a prescribing practitioner has met his/her responsibility under § 1306.04(a) is when the physician ''prescribe[s] and dispens[es]'' a controlled substance, the operative date for determining whether a pharmacist has met his/her corresponding responsibility is when the pharmacist ''fills the prescription.''[77] And as noted *supra,* the record establishes by a preponderance of the evidence that the date on Trinity II's fill stickers represent the date when Trinity II's pharmacists filled the prescriptions at issue in this case. Accordingly, § 1306.04(a) required Trinity II to identify and to resolve any suspicions that a particular prescription lacked a legitimate medical purpose *before knowingly filling* the prescription.

As noted *supra,* the evidence of Trinity II's improper early fills alone is sufficient to prove that Trinity II knowingly filled illegitimate prescriptions in violation of its corresponding responsibility under § 1306.04(a). However, there are other

[75] Likewise, Trinity II contends that the date ''when the prescription was actually dispensed to the patient . . . and not the fill date, is the operative evidence of whether there was an improper dispensing event.'' Resp. Except. at 4; ALJ Ex. 41 at 16–17 (''Doering was basing his often incorrect counting on the date the prescription was filled, without having any knowledge as to when the customer actually picked up the prescription''). Trinity II claims that its ''electronic records included patient signature logs for when the prescription was actually dispensed to the patient,'' Resp. Except. at 4, and as a result of this claim, the CALJ averred that the Government's expert ''could not determine the date the patients picked up their medications because he had never been provided with the pharmacy's disbursement log.'' R.D. at 25. In fact, neither the CALJ nor Trinity II cite to any authority (and I am aware of none) supporting their position that the date when the customer actually receives the controlled substance should be used to measure whether a pharmacy lawfully filled a prescription early under 21 CFR 1306.04(a). To the extent that the CALJ and Trinity II rely on the definition of dispense, I discuss *infra* why such reliance is misplaced.

[76] The CALJ surmised that, unless the pharmacist's corresponding responsibility is delayed until ''the moment the medication is being dispensed to the patient,'' then ''any ethical Florida pharmacist who works ahead and prepares medications in advance of their eligibility to be picked up by the patient due to staffing or some other benign business-related issue would stand in unavoidable conflict with the standard of pharmacy practice in Florida merely by virtue of the date on the fill sticker.'' R.D. at 25. Aside from the fact that the record does not show that Trinity II routinely filled prescriptions ''in advance of their eligibility to be picked up,'' no Agency precedent supports the CALJ's hypothetical as some kind of exception to a pharmacist's corresponding responsibility. In fact, § 1306.04(a) precludes the CALJ's hypothetical by imposing a corresponding responsibility on the pharmacist at the time of ''filling,'' not at some point after filling the prescription. Thus, to fulfill their corresponding responsibility under § 1306.04(a), pharmacists must identify and resolve any red flags of diversion presented by controlled substance prescriptions (*e.g.,* by completing the prospective drug use review that Florida law required Trinity II to do) *before* filling them in order to avoid ''knowingly filling'' illegitimate prescriptions.

[77] Furthermore, even if § 1306.04(a) did impose on pharmacists a corresponding responsibility not to ''knowingly dispense'' an illegitimate prescription (rather than prohibiting them from ''knowingly filling such a purported prescription''), the calculation of an ''early fill'' would be the same. Under the CSA, '' 'dispense' means to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, a practitioner, including . . . the packaging, labeling, or compounding necessary to prepare the substance for such delivery.'' 21 U.S.C. 802(10). ''The terms 'deliver' or 'delivery' mean the actual, constructive, or attempted transfer of a controlled substance.'' *Id.* § 802(8). Thus, the situations in which a pharmacy ''dispenses'' a controlled substance includes when the pharmacy attempts to transfer a controlled substance to an ultimate user pursuant to a lawful prescription ''by packaging or labeling a controlled substance for such delivery''—*i.e.,* before a customer actually receives the prescribed controlled substance. As the Government points out in its Exceptions, even under Florida's definition, ''dispensing'' occurs before the customer receives the prescription. Gov. Except. at 46 (noting that Florida's 'dispense' definition in Ch. 465.003(6) unequivocally states that ''the actual sales transaction and delivery of such drug shall *not* be considered dispensing'') (quoting Fla. Stat. § 465.003(6)). In this case, when Trinity II filled a bottle with a prescribed controlled substance and then affixed a fill label or sticker to the bottle or ''packaging'' containing the controlled substance, Trinity II ''dispensed'' the prescription under the CSA (and arguably Florida law) by ''labeling . . . the substance for'' ''delivery to an ultimate user.'' The record reflects that the date on the fill sticker represents the date when Trinity II packaged or labeled a prescribed controlled substance. And as the CALJ concedes, ''the date on the fill sticker'' is also what the Government used to calculate the date when Trinity II ''filled'' the prescriptions at issue in the case. *See* R.D. at 25. Accordingly, even under the theory that ''fill'' in § 1306.04(a) really means ''dispense,'' the date on the fill sticker in this case reflects both the ''fill'' date and the ''dispense'' date.

examples of suspicious prescriptions nonetheless filled by Trinity II that further prove that Trinity II knowingly filled prescriptions lacking a legitimate medical purpose. For instance, the evidence established that on December 2, 2013, Trinity II knowingly filled two therapeutically duplicative prescriptions for customer R.H.—one for 120 tablets of hydromorphone 8 mg and a second for 120 tablets of oxycodone 30 mg. Each immediate-release opiate prescription had the same dosage instruction to take one tablet every six hours. The Agency has previously found that therapeutically duplicative prescriptions raise a strong suspicion of diversion, and a pharmacist who fails to resolve this suspicion before knowingly filling the prescription violates his/her corresponding responsibility under § 1306.04(a). *See The Medicine Shoppe,* 79 FR 59504, 59507 & n. 10 (2014) (finding that prescriptions for ''duplicative narcotics'' is evidence of diversion, and knowingly filling such prescriptions without resolving this strong suspicion violates § 1306.04(a)). Here, Trinity II's pharmacists offered no notes or comments on the front or back of these prescriptions, the dispensing log, or in the patient profile explaining why R.H. should have received these two therapeutically duplicative prescriptions. Thus, I find that Trinity II's pharmacist's decision to fill R.H.'s therapeutically duplicative prescriptions without explanation, combined with the early fill evidence already described, also shows that Trinity II knowingly filled prescriptions that lacked a legitimate medical purpose.

In addition, the evidence shows that Trinity II knowingly and routinely filled controlled substance prescriptions presented by customers who had traveled great distances to fill them, even though the Agency has previously held that prescriptions by such customers should cause pharmacists to suspect that the prescriptions are not legitimate.[78] For example, on June 5, 2013, customer S.S. traveled across the entire state of Florida—and approximately 397 miles roundtrip—to obtain from his physician in Tampa and to fill at Trinity II in Clearwater his prescription for 150 tablets of hydromorphone 8 mg. On May 10, 2012, customer C.V. traveled from his home in Port Charlotte, Florida—an approximately 224 miles roundtrip—to obtain from his physician in Tampa and to fill at Trinity II his prescription for 120 tablets of hydromorphone 8 mg. On June 13, 2013 and on July 3, 2013, customer D.E. traveled from his home in Brooksville, Florida—an approximately 119 miles roundtrip—to obtain from his physician in Tampa and to fill at Trinity II identical prescriptions for hydromorphone 8 mg. As already noted, Trinity II also filled the July 3, 2013 prescription nine days early—adding to the suspiciousness of this particular prescription's legitimacy. Nevertheless, even though Trinity II knew the addresses of S.S.,[79] C.V., D.E., and their respective physicians, the evidence shows that Trinity II failed to document why it nonetheless filled the schedule II controlled substance prescriptions for these customers.

The travel of customer D.W. deserves special mention. He traveled all the way from Wellborn, Florida—an approximately 404 miles roundtrip—to obtain from his physician in Tampa and to fill at Trinity II controlled substance prescriptions for oxycodone 30 mg with ginger and carisoprodol 350 mg on three separate occasions in March, April, and May of 2012. Moreover, D.W. endured the added inconvenience of traveling on different dates to fill his second and third prescriptions of each of these controlled substances—filling two prescriptions for oxycodone with ginger on April 5, 2012 and on May 3, 2012, and two prescriptions of carisoprodol on April 19, 2012 and on May 11, 2012. The fact that D.W. was willing to travel these distances so frequently, and inefficiently, just to fill these controlled substances prescriptions at Trinity II should have highlighted for its pharmacists just how unlikely it was that these prescriptions were filled for a legitimate medical purpose. Nevertheless, even though Trinity II knew how far away D.W. lived, Trinity II failed to document why it still filled D.W.'s highly suspicious controlled substance prescriptions.

Accordingly, Trinity II's pharmacists' knowledge of the great distances traveled by these customers, combined with their failure to document why their prescriptions should nonetheless be filled, shows that Trinity II's pharmacists knew that these prescriptions lacked a legitimate medical purpose.

The evidence further shows that Trinity II routinely filled ''cocktail prescriptions'' in which customers simultaneously presented multiple prescriptions that would provide the same customer an opioid, a benzodiazepine, and carisoprodol (a muscle relaxant). Trinity II routinely filled these ''cocktail prescriptions'' even though the Agency has identified this combination of drugs in several final decisions as being highly abused prior to the events at issue here. *See Paul Volkman,* 73 FR 30630, 30637 (2008); *see also East Main Street Pharmacy,* 75 FR at 66157–58. Nevertheless, on June 27, 2013 and July 23, 2013, Trinity II filled for customer S.S. prescriptions for the same combination of controlled substances—an opioid (hydromorphone 8 mg), a benzodiazepine (alprazolam 2 mg), and carisoprodol 350 mg—on each date. This is also the same customer who had traveled across the entire state of Florida to obtain these prescriptions—further highlighting the suspicious nature of his prescriptions. *See supra.* Trinity II's pharmacists provided no notes or comments explaining why they knowingly filled these ''cocktail'' prescriptions. *Id.* Thus, I find that Trinity II's pharmacists' knowledge that these prescriptions reflected a well-established suspicious ''cocktail'' of controlled substances for a customer who they also knew had traveled across the entire state of Florida established that Trinity II's pharmacists knew that these prescriptions lacked a legitimate purpose.

Likewise, the record shows that on March 7, 2012, May 3, 2012, and May 31, 2012, Trinity II filled prescriptions for the same ''cocktail'' of controlled substances—an opioid (oxycodone 30 mg), a benzodiazepine (alprazolam 2 mg), and carisoprodol—issued by the same prescribing physician to customers J.Ha. and R.Ha. on each date. And yet,

[78] *E.g., East Main Street Pharmacy,* 75 FR 66,149, 66,153 & n. 16, 66,163–66,164 (2010) (finding that traveling nearly 100 miles to pharmacy ''provided further reason to know that the prescriptions were not legitimate'' and that customers traveling 90 miles from their residence to the pharmacy constituted ''travelling great distances to fill their prescriptions'' and concluding ''the fact that the patients were driving so far to get their prescriptions filled 'would be a major red flag for any pharmacist'''').

[79] The fill sticker that Trinity II generated and attached to the back of the prescription, the dispensing log, and the patient profile all show S.S.'s address to be in Orange Park, Florida, which is a city located near Jacksonville, Florida. GX 44, at 1, 2, 9; Tr. 1680. However, as noted *supra,* the front of the prescription lacked S.S.'s address. As a result, the Government alleged that Trinity II's filling of this prescription constitutes an independent violation of 21 CFR 1306.05, which requires, *inter alia,* all prescriptions for controlled substances to bear the full name and address of the patient and imposes a corresponding liability ''upon the pharmacist . . . who fills a prescription not prepared in the form prescribed by DEA regulations.'' *Id.* at § 1306.05(a), (f). The CALJ also recommended that I find that Trinity II violated 21 CFR 1306.05. *See* R.D. at 46. At the time these prescriptions were issued, the Agency had made a public pronouncement that, if missing, pharmacists could add a patient's address if state law allowed it. *See Superior I and II,* 81 FR at 31336 n.58. Here, the Government has produced no evidence that Florida law, the Board of Pharmacy's regulations, or the Board's policy prohibited Trinity II's pharmacists from adding the patient's address to the prescriptions.

Trinity II's pharmacists never explained why they filled these highly suspicious prescriptions. The suspiciousness of these ''cocktail prescriptions'' was further compounded by the fact that these prescriptions also reflected ''pattern prescribing'' and a lack of individualized drug therapy. Specifically, Trinity II knew that J.Ha. and R.Ha. shared a last name and home address and that their prescriptions were issued (1) by the same prescribing physician, (2) on the same day, and (3) for the same drugs.[80] Trinity II's pharmacists provided no notes or comments explaining why they knowingly filled these prescriptions. *See supra.* Thus, I find that the fact that Trinity II's pharmacists' knew that these prescriptions reflected a well-established suspicious ''cocktail'' of controlled substances for two customers who also shared the same last name, address, and prescribing physician, established that Trinity II's pharmacists knew that these prescriptions lacked a legitimate purpose.

Accordingly, and in light of the very substantial weight of the evidence of diversion presented by the suspicious prescriptions in this case—early fills, therapeutic duplication, customers traveling great distances, ''cocktail prescriptions,'' and ''pattern prescribing''—I find that Trinity II's pharmacists violated their corresponding responsibility by knowingly filling prescriptions that lacked a legitimate medical purpose.

The Allegations Pursuant to 21 CFR 1306.06

Under 21 CFR 1306.06, ''[a] prescription for a controlled substance may only be filled by a pharmacist, acting in the usual course of his professional practice.'' Pharmacists fill prescriptions for controlled substances in the usual course of their professional practice, for example, when pharmacists follow the prescribing physician's instructions for a prescription issued for a legitimate medical purpose. When pharmacists knowingly fail to follow such instructions in filling otherwise valid prescriptions, they are not ''acting in the usual course of [their] professional practice'' and therefore violate 21 CFR 1306.06.

Here, Trinity II filled prescriptions without following the prescribing physician's instructions with respect three of the Show Cause Order's charges. Specifically, in the third and fourth charges of the Show Cause Order, the Government charged Trinity II with twice filling prescriptions for customer D.G. for fentanyl patches on dates prior to the prescribing physician's explicit ''No Exceptions Do Not Fill Until'' instructions on each prescription. As noted *supra,* I have found that the Government proved these facts by a preponderance of the evidence.[81] Although he did not rely on 21 CFR 1306.06,[82] the CALJ recommended that I sustain the Government's third and fourth charges. I do sustain those charges, but only on the basis that Trinity II violated 21 CFR 1306.06[83] when it filled[84] these prescriptions

[80] *See East Main Street Pharmacy,* 75 FR at 66,157 (noting red flags such as ''lack of indivdua[liza]tion of therapy, certain patterns from physicians of seeing the same types of controlled substances over, and over, and over, again''). This is not the only example of Trinity II filling prescriptions presenting this type of ''pattern prescribing.'' On two occasions—November 20, 2013 and December 18, 2013—Trinity II filled prescriptions for customers M.W. and J.W. for the same controlled substance (oxycodone 30 mg with ginger), even though Trinity II knew that these customers shared the same last name, address and prescribing physician. Trinity II's pharmacists never explained why they nonetheless filled these prescriptions. As a result, I find that it is highly probable that Trinity II's pharmacists knew that these prescriptions also lacked a legitimate medical purpose.

[81] In addition, I find that there is no evidence establishing that the ''Do Not Fill'' prescriptions underlying the Show Cause Order's third and fourth charges were invalid under 21 CFR 1306.04(a) and 1306.11(a). For this reason, I deny the Government's allegation that Trinity II also (1) violated their corresponding responsibility under 21 CFR 1306.04(a) when they filled these two prescriptions and (2) filled a prescription without a valid prescription in violation of 21 CFR 1306.11(a) regarding these prescriptions. *See* ALJ Ex. 1b, at 14–15.

It is also for this reason that I disagree with the CALJ's statement that, ''[b]ecause the scrip[t] was not valid until the date articulated by the practitioner, . . . the Respondent filled these two prescriptions without a lawful order from a practitioner.'' R.D. at 49. As the CALJ himself noted in recommending that I reject the Government's claim of a § 1306.11(a) violation regarding the Show Cause Order's fifth charge, ''because there was a (seemingly) valid scrip[t] presented for each of these dispensing events,'' Trinity II's conduct should *not* be reviewed ''as if it were dispensed with *no* [valid] order from the practitioner.'' *Id.* at 49 n.116. I agree. In the Show Cause Order's third, fourth, and fifth charges, customers presented apparently valid prescriptions to Trinity II, but its pharmacists ignored (repeatedly) the same instructions when filling them. Thus, I agree with the CALJ's argument regarding the fifth charge, and I apply the same argument in rejecting his rationale regarding the third and fourth charges.

[82] The CALJ criticized the Government for not relying on 21 CFR 1306.12 and 21 CFR 1306.14 as a basis for the third and fourth charges. R.D. at 47 n.111 (''It is difficult to imagine why the Government did not cite to these regulatory sections, which speak directly to the violations at issue in OSC ¶¶ 9 and 10.''). However, the CALJ's own analysis supplies a good explanation for why the Government did not pursue charges on that basis. The CALJ conceded that ''those regulatory sections specifically pertain to the situation where a practitioner issues multiple prescriptions, presumably on the same date.'' *Id.* at 47. He further referenced DEA's ''notice of final rule implementing the regulation,'' in which ''DEA noted that the rule 'did not address whether a single prescription with ''Do not fill before [date]'' instructions is permissible' '' and that ''no 'existing provision of the CSA or DEA regulations address[es] this type of prescribing.' '' *Id.* at 47–48 (quoting ''Issuance of Multiple Prescriptions for Schedule II Controlled Substances,'' 72 FR 64,921–64,924 (2007)). Here, the ''Do Not Fill'' prescriptions underlying the Show Cause Order's third and fourth charges were not issued on the same date and hence are not ''multiple prescriptions'' on the same date within the meaning of 21 CFR 1306.12(b).

[83] Federal courts have suggested that the identical phrase—''usual course of his professional practice''—found in 21 CFR 1306.04(a) essentially includes a knowingly requirement in criminal cases. *See, e.g., Bennett,* 874 F.3d at 245 (finding that a prescribing physician violates § 1306.04(a) when the practitioner ''knowingly distribut[es] prescriptions outside the usual course of professional practice'') (internal citations and quotations omitted). Assuming the ''knowingly'' scienter standard applies to the application of § 1306.06 to this administrative proceeding, I find that the Government has met its burden to prove it. The Government's burden of proof in this proceeding is ''preponderance of the evidence,'' not ''beyond a reasonable doubt.'' In that vein, while it is conceivable that a Trinity II pharmacist may mistakenly fail to follow ''Do Not Fill Until'' instructions in good faith once, it is less credible that Trinity II's pharmacists would fail to follow such instructions for the same customer two months in a row without doing so knowingly. The CALJ apparently agreed. R.D. at 48–49 (''Despite the clear indication of the practitioner's limitation on the scrip[t]s, Respondent's employees blatantly ignored the instruction and filled the prescriptions before the practitioner had authorized them to be filled.''). When this pattern is combined with the broader pattern of Trinity II's pharmacists knowingly filling prescriptions in violation of their corresponding responsibility, *see supra,* I have little trouble finding that the Government has established by a preponderance of the evidence that Trinity II's pharmacists knowingly failed to follow the ''Do Not Fill Until'' instructions in D.G.'s prescriptions and hence filled prescriptions outside the pharmacists' usual course of their professional practice under 21 CFR 1306.06.

In any event, even if the Government could not prove that this conduct violated § 1306.06 or otherwise met Factors Two or Four under 21 U.S.C. 823(f), I find that a pharmacist blatantly and knowingly ignoring a physician's instructions on an otherwise valid prescription would constitute ''[s]uch other conduct which may threaten the public health and safety.'' 21 U.S.C. 823(f)(5). *See* R.D. at 48 (''To allow a pharmacy to fill a prescription at any time before a date specified by the issuing practitioner would completely undermine the practitioner's decision to issue the scrip[t] in that manner.'').

[84] In its Exceptions, Trinity II offered its conclusory argument that the date ''when the prescription was actually dispensed to the patient . . . and not the fill date, is the operative evidence of whether there was an improper dispensing event. Because the Government never requested'' ''the pharmacy's electronic records [which] included patient signature logs,'' ''there was insufficient evidence to meet the Government's burden of proof for this allegation.'' Resp. Except. at 4. I reject this Exception for the same two reasons that I rejected the same argument *supra* in the context of Trinity II's violations of 21 CFR 1306.04(a). Like § 1306.04(a), 21 CFR 1306.06 expressly hinges on whether pharmacists ''filled'' controlled substance prescriptions in the usual course of their professional practice; it does not depend on ''when the prescription was actually dispensed to the patient'' as Trinity II claims. Thus, the ''operative evidence'' is the evidence of filling, and the CALJ properly reviewed the dates on the fill sticker, the

Continued

before the prescribing physician's ''Do Not Fill'' instructions.

In the Show Cause Order's fifth charge, the Government alleged, and as noted *supra* I have found, that Trinity II filled for customer J.T. seven consecutive prescriptions for a morphine sulfate solution that was at least five times, and sometimes 15 times, stronger than the dosages that the physician had prescribed. Although the Government charged that this conduct violated 21 CFR 1306.06 and 21 CFR 1306.11(a), I find that the conduct did not violate 21 CFR 1306.11(a) because I find that there is no proof that the prescriptions underlying the Show Cause Order's fifth charge were invalid. *See* R.D. at 49 n.116 (''there was a (seemingly) valid scrip[t] presented for each of these dispensing events''). For this reason, the CALJ recommended that I deny the Government's allegation that Trinity II filled prescriptions in the fifth charge without a valid prescription and in violation of 21 CFR 1306.11(a) regarding these prescriptions. *See id.*

Although he did not rely on 21 CFR 1306.06,[85] the CALJ nonetheless recommended that I sustain the Government's fifth charge. I do sustain this charge, but only on the basis that Trinity II violated 21 CFR 1306.06. As with D.G.'s prescriptions in the third and fourth charges, customer J.T. presented apparently valid prescriptions to Trinity II, but the Government proved the allegations in its fifth charge that Trinity II's pharmacists repeatedly ignored the prescriptions' instructions when filling them. While it is conceivable that a Trinity II pharmacist may have mistakenly failed to follow a prescription's dosage instructions in good faith once, it is not remotely credible that Trinity II's pharmacists would fail to follow such instructions for the same customer seven times in the span of six months without doing so knowingly. For this reason, I have little trouble finding that the Government has established by a preponderance of the evidence that Trinity II's pharmacists knowingly filled prescriptions with the incorrect dosage strength of a controlled substance seven times and hence filled prescriptions outside the pharmacists' usual course of their professional practice in violation of § 1306.06.

The Allegations Regarding Prescriptions Filled by Non-Pharmacists

In the Show Cause Order's final two charges, the Government alleged that Trinity II violated federal and Florida law when it allowed pharmacist interns to fill controlled substances prescriptions. Section 1306.06 provides that controlled substances prescriptions ''may only be filled by a pharmacist.'' Federal law states that a pharmacist ''means any pharmacist licensed by a State to dispense controlled substances, and shall include any other person (*e.g.,* pharmacist intern) authorized by a State to dispense controlled substances under the supervision of a pharmacist licensed by such State.'' 21 CFR 1300.01(b).

In his Recommended Decision, the CALJ found that Florida law authorized pharmacy interns to dispense controlled substances. Specifically, the CALJ found that Florida defined a ''pharmacist'' as a person ''licensed pursuant to chapter 465 to practice the profession of pharmacy'' in Florida, and that Chapter 465 in turn defines the ''practice of the profession of pharmacy'' to include ''dispensing.'' R.D. at 44 (quoting Fla. Stat. §§ 893.02(18), 465.003(13)). The CALJ also found that Florida law states that a ''person other than a licensed pharmacist or pharmacy intern may not engage in the practice of pharmacy.'' R.D. at 44 (quoting Fla. Stat. § 465.014(1)). On this legal basis, the CALJ recommended that I find that ''both pharmacists and pharmacy interns are authorized under Florida law to 'practice the profession of pharmacy,' which includes dispensing. Therefore, it is acceptable for pharmacy interns to dispense controlled substances under Florida law and under the DEA regulations.'' R.D. at 44.

In its Exceptions, the Government took issue with the CALJ's characterization of Florida law and whether it authorized pharmacist interns to dispense controlled substances under the supervision of a licensed Florida pharmacist. The Government contended that § 893.04(1) of Chapter 893 of Florida law states that controlled substance prescriptions may only be dispensed by ''a pharmacist, in good faith and in the course of professional practice''—making no reference to pharmacy interns. Gov. Except. at 78. The Government also argued that pharmacy interns are not ''licensed pursuant to Chapter 465 to practice the profession of Pharmacy'' as required under § 893.02(18) but instead are ''registered with the'' state under § 465.03(12). Gov. Except. at 79. For these reasons, the Government asked me to reject the CALJ's recommendation and find that pharmacy interns are essentially never authorized to dispense controlled substances prescriptions in Florida. *Id.* at 80.

I find that both the CALJ and the Government have misinterpreted Florida law. Although Florida law is not as clear as federal law in this regard, Florida law neither permits all pharmacy interns to dispense controlled substances (as the CALJ recommended), nor prohibits all pharmacy interns from doing so (as the Government claims). Rather, Florida law permits pharmacy interns to dispense controlled substances only when they are under the statutorily prescribed supervision of a licensed pharmacist. For example, Florida statutes makes it unlawful for an intern registered in Florida to ''fill, compound, or dispense prescriptions or to dispense medicinal drugs'' *if* the intern is ''not acting under the direct and immediate personal supervision of a licensed pharmacist.'' Fla Stat. § 465.015(2)(b). Florida law also authorizes disciplinary actions against pharmacists ''permitting a registered intern who is *not* acting under the direct and immediate personal supervision of a licensed pharmacist, to fill, compound, or dispense any prescriptions in a pharmacy owned and operated by such pharmacists or in a pharmacy where such pharmacists are employed or on duty.'' *Id.* 465.016(1)(c) (emphasis added). In addition, Florida's Administrative Code states that ''[n]o intern shall perform any acts relating the filling, compounding, or dispensing of medicinal drugs *unless* it is done under the direct and immediate personal supervision of a person actively licensed to practice pharmacy

front of the prescription, and the dispensing report to identify the fill date. Second, for the reasons I have already discussed *supra,* the dispensing date would ultimately have been the same as the fill date.

[85] The CALJ recommended that I find that Trinity II's conduct in the Show Cause Order's fifth charge violated Trinity II's corresponding responsibility under 21 CFR 1306.04(a) because ''the regulation's plain language imposes a corresponding responsibility on the pharmacist 'for the proper . . . dispensing' of the prescription. Dispensing a stronger concentration of a controlled substance than has been authorized by the practitioner is a violation of that corresponding responsibility.'' R.D. at 49.

The CALJ's interpretation of § 1306.04(a) is incorrect for at least two independent reasons. First, as noted *supra,* pharmacists violate their corresponding responsibility when they ''knowingly fill[ ]'' a prescription that lacks a legitimate purpose. The CALJ has already recommended that I find (and I have so found) that the underlying prescriptions at issue in the fifth charge were valid, R.D. at 49 n. 116 (''there was a (seemingly) valid scrip[t] presented for each of these dispensing events''), making impossible a finding that Trinity II's pharmacists knowingly filled illegitimate prescriptions in violation of § 1306.04(a). Second, also as noted *supra,* the plain language of § 1306.04(a) assigns'' [t]he responsibility for the proper prescribing and dispensing of controlled substances . . . upon the prescribing practitioner,'' not upon the pharmacists, whose corresponding responsibility expressly relates to filling, not dispensing. Indeed, it is likely for these reasons that the Government did not claim that Trinity II violated its corresponding responsibility in the Show Cause Order's fifth charge.

in this state.'' Fla. Admin. Code r. 64B16–26.400 (emphasis added). Thus, I find that it is lawful in Florida for a pharmacy intern, registered in Florida, to fill and to dispense prescriptions so long as it is under the statutorily prescribed supervision of a licensed Florida pharmacist.

Here, even assuming *arguendo* as true the Government's allegations that Mina A. Ghobrial was a pharmacy intern who worked at Trinity II and filled controlled substances prescriptions during the alleged time period, I have already found that the Government failed to establish that Ghobrial was not supervised by a licensed Florida pharmacist when Ghobrial did so. *See supra.* Accordingly, I agree with the CALJ's recommendation that I find (and I do so find) that the Government has failed to carry its burden that Ghobrial was not properly supervised under Florida law, and I agree with the CALJ's recommendation that I reject (and I do so reject) the Show Cause Order's sixth and seventh charges.

Summary of Factors Two and Four

As found above, Trinity II's pharmacists knowingly filled dozens of controlled substance prescriptions for more than a dozen patients even though those prescriptions lacked a legitimate medical purpose. 21 CFR 1306.04(a). Moreover, Trinity II's pharmacists knowingly and repeatedly ignored the instructions set forth in legitimate prescriptions issued to two of its customers and thereby failed to fill them in the usual course of their professional practice. 21 CFR 1306.06. Thus, I conclude that Trinity II has engaged in egregious misconduct which supports the revocation of its registration. *See Dewey C. MacKay,* 75 FR 49956, 49997 (2010); *Krishna-Iyer,* 74 FR at 463; *Alan H. Olefsky,* 57 FR 928, 928–29 (1992). I therefore hold that the Government has clearly established its *prima facie* case that Trinity II's registration ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f).

In its Exceptions, Trinity II argued that, ''[e]ven assuming that the DEA met its burden of proof, '' the CALJ ''erred in failing to balance the relatively *de minimis* problems that the ALJ found were supported by the preponderance of the evidence against the number of prescriptions during the [two-year] audit period in which there was no problem.'' Resp. Except. at 5 (citing *Iyer* v. *DEA,* 249 Fed. Appx. 159, 160 (11th Cir. 2007) (unpublished). Specifically, Trinity II claims that ''the sanction of revocation . . . is not supported'' because the CALJ found that ''approximately 0.07%'' of the prescriptions filled by Trinity II violated the law. *Id.* at 5–6.

Trinity II's challenge to the CALJ's recommendation of revocation on the basis of the *Iyer* decision and the existence of prescriptions it filled ''in which there is no problem'' is unavailing for at least three reasons. *First,* as a threshold matter, I have already found that the scope of Trinity II's violations of federal law—particularly regarding Trinity II's egregious violations of its corresponding responsibility—far exceed the number that even the CALJ identified. In other words, some of the very prescriptions that Trinity II filled and claims in its Exceptions were ''no problem,'' were, in fact, highly problematic and illegal. *Second,* Trinity II's arguments based on the unpublished 11th Circuit opinion *Iyer* v. *DEA* are identical to those already rejected by the Agency in multiple final opinions, such as *Wesley Pope, T.J. McNichol,* and *Dewey C. MacKay,* and I incorporate the relevant portions of those final opinions herein. *E.g., Wesley Pope,* 82 FR 14944, 14981–14984 (2017); *T.J. McNichol,* 77 FR 57133, 57144–57146 (2012); *Dewey C. MacKay,* 75 FR at 49977. As I have pointed out previously (and repeat here for emphasis), the 11th Circuit has never chosen to publish the *Iyer* decision, and by local rule it is therefore not binding precedent for this case or for any other case. 11th Cir. R. 36–2 (''Unpublished opinions are not considered binding precedent''). In addition, no subsequent 11th Circuit panel has chosen to adopt it; on the contrary, they have affirmatively declined multiple opportunities to do so. *See Pope,* 82 FR at 14983 (identifying cases in which respondents have raised *Iyer*-based arguments identical to Trinity II's, and the 11th Circuit has nonetheless denied the petitions of review and affirmed the Agency's sanction). Moreover, the 10th Circuit, in a published opinion, flatly rejected the same argument Trinity II has made here. *MacKay* v. *DEA,* 664 F.3d 808, 819 (10th Cir. 2011). *Third,* and most significantly, even assuming *arguendo* that Trinity II legally filled every other controlled substance prescription presented to it between February 2012 and February 2014, and I consider them consistent with *Iyer,* I nevertheless find that the violations identified by the CALJ are sufficiently egregious to outweigh the remaining (and presumptively non-problematic) prescriptions. Thus, I find that the CALJ did not err in his recommendation that revoking Trinity II's registration is in the public interest.

I therefore hold that the Government has established its prima facie case that Trinity II's registration ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f).

Sanction

Where, as here, ''the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant 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); *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).

The Agency has also held that '' '[n]either *Jackson,* nor any other agency decision, holds . . . that the Agency cannot consider the deterrent value of a sanction in deciding whether a registration should be [suspended or] revoked.' '' *Gaudio,* 74 FR at 10094 (quoting *Southwood,* 72 FR at 36504); *see also Robert Raymond Reppy,* 76 FR 61154, 61158 (2011); *Moore,* 76 FR at 45868. This is so, both with respect to the respondent in a particular case and the community of registrants. *See Gaudio,* 74 FR at 10095 (quoting *Southwood,* 71 FR at 36503). *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'').

Here, the CALJ recommended that I find that Trinity II ''has not accepted responsibility'' and that, as a result, ''evidence of remedial steps is irrelevant.'' R.D. at 52 (citing *Hassman,* 75 FR at 8236). The CALJ further recommended that I find that, ''[i]n any event, the Respondent provided no evidence of remedial steps in this case.'' *Id.*

In its Exceptions, Trinity II claims that the CALJ ''failed to provide

Respondents' with the opportunity to present their evidence'' ''that it accepts responsibility for the established misconduct, and has taken appropriate steps to prevent such misconduct in the future.'' Resp. Except. at 4. Trinity II specifically claims that the CALJ did not consider as ''mitigating evidence'' that Trinity II allegedly ''voluntarily ceased dispensing schedule II controlled substances by March 1, 2014.'' *Id.* at 4–5.

I agree with the CALJ that Trinity II has not accepted responsibility for its misconduct nor presented sufficient mitigating evidence to assure me that Trinity II can be entrusted with the responsibility carried by a DEA registration. The CALJ observed:

> There was no aspect of the evidentiary rulings issued during the prehearing proceedings in this case that would have limited [Trinity II's] ability to do so in any way. . . . the Respondent elected to proceed on a peculiar course where it presented no defense to these allegations, accepted no responsibility for them, and never indicated that it would act differently in the future. The registrant is essentially saying, it did it, it liked it, and it will continue to do it. . . . it has left the Agency little choice but to revoke its registration to ensure the safety of the public.

R.D. at 54 n.124. Indeed, even in its Exceptions, Trinity II identifies no evidence of acceptance of responsibility, much less remorse, for its misconduct in this case. It did not even try to provide such evidence at the hearing. And it is difficult to overstate the significance of the misconduct that Trinity II has failed to accept. Trinity II's willingness to knowingly fill seemingly any prescription and any combination of prescriptions that its customers presented—no matter how obvious it was that the prescription lacked a legitimate purpose—is alarming. Trinity II was apparently equally ready to provide controlled substances to an unscrupulous customer earlier, or at dramatically greater dosages, than the prescribing physician had instructed on the face of the prescriptions.

I thus find that Trinity II has not adequately accepted responsibility for its misconduct. This finding provides reason alone to conclude that Respondent has not rebutted the Government's *prima facie* showing that it has committed acts which render its continued registration ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). And having found that Trinity II knowingly diverted controlled substances, there is no need to consider its remedial efforts [86] as they are rendered irrelevant by its failure to acknowledge its misconduct. *See The Medicine Shoppe,* 79 FR 59504, 59510 (2014), *pet. for rev. denied* 626 Fed. Appx. 2 (Mem.) (D.C. Cir. 2015); *Jayam Krishna-Iyer,* 74 FR 459, 464 (2009) (''Because of the grave and increasing harm to public health and safety caused by the diversion of prescription controlled substances, even where the Agency's proof establishes that a practitioner has committed only a few acts of diversion, this Agency will not grant or continue the practitioner's registration unless he accepts responsibility for his misconduct.''). As the Tenth Circuit has recognized in the context of physician practitioners:

> The DEA may properly consider whether a physician admits fault in determining if the physician's registration should be revoked. When faced with evidence that a doctor has a history of distributing controlled substances unlawfully, it is reasonable for the [DEA] to consider whether that doctor will change his or her behavior in the future. And that consideration is vital to whether continued registration is in the public interest.

MacKay v. *DEA,* 664 F.3d 808, 820 (10th Cir. 2011) (citing *Hoxie* v. *DEA,* 419 F.3d at 483 (6th Cir. 2005)). See also *Hoxie,* 419 F.3d at 483 (''The DEA properly considers the candor of the physician . . . and admitting fault [to be] important factors in determining whether the physician's registration should be revoked.'').

I further find that the misconduct proven on this record is egregious and supports the revocation of Respondent's registration. More specifically, my finding that Trinity II's pharmacists dispensed multiple prescriptions in violation of their corresponding responsibility and thereby knowingly diverted controlled substances is, by itself, sufficient to support the revocation of its registration. Revocation is also warranted by my finding that, even with respect to valid prescriptions, Trinity II's pharmacists repeatedly and knowingly failed to fill them consistent with the prescribing physicians' instructions. *Cf. Medicine Shoppe-Jonesborough,* 300 Fed. Appx. 409, 411–412 (6th Cir. 2008) (rejecting '' 'human error' defense'' to dispensing ''the same drug in different concentrations'' because ''dispensing the right drug in the wrong strength 'can have serious consequences for the health of patients' '') (internal citations omitted).

I further find that the Agency's interest in deterring future misconduct both on the part of Trinity II as well as the community of pharmacy registrants supports revocation. As for the issue of specific deterrence, the revocation of Trinity II's registration is not a permanent bar. And regarding general deterrence, those members of the regulated community who contemplate using their registrations to divert controlled substances need to know that there will be serious consequences if they choose to do so. This interest would be compelling even if it was not the case that the nation faces an epidemic of opioid abuse.

I therefore conclude that the revocation of Trinity II's registration is necessary to protect the public interest. And I will further order that any application of Trinity II to renew or modify its registration, or for any other registration, be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration FT0531586 issued to Trinity Pharmacy II, Inc., be, and it hereby is, revoked. I further order that any application of Trinity Pharmacy II, Inc. to renew or modify its registration, or for any other registration, be, and it hereby is, denied. This order is effective immediately.

Dated: February 6, 2018.

Robert W. Patterson,

Acting Administrator.

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BILLING CODE 4410–09–P

[86] Furthermore, the CALJ did not deny Trinity II, as it claims in its Exceptions, the opportunity to establish that it ceased dispensing schedule II controlled substances. Resp. Except. at 4–5. During the hearing, one of the DIs testified to his awareness that Trinity II stopped distributing schedule II controlled substances as of March 1, 2014. Tr. 527. However, Trinity II provided no evidence that this decision was intended to be remedial. More importantly, I have found that Trinity II's violation of its corresponding responsibility extended to other controlled substances, such as alprazolam, not regulated under schedule II. Thus, even if Trinity II had ceased distributing schedule II controlled substances as a remedial measure, it falls far short of what would have been necessary to mitigate Trinity II's misconduct.

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Part III

Postal Regulatory Commission

39 CFR Parts 3001, 3004, 3007

Non-Public Information; Proposed Rule

POSTAL REGULATORY COMMISSION

39 CFR Parts 3001, 3004, 3007

[Docket No. RM2018–3; Order No. 4403]

Non-Public Information

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing to amend its existing rules relating to non-public materials. The proposed rules ensure appropriate transmission and protection of non-public materials, maintain appropriate transparency, and modernize practice before the Commission. The Commission invites public comment on the proposed rules.

DATES: *Comments are due:* March 23, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Postal Regulatory Commission (Commission) establishes a rulemaking docket to consider amending the Commission's rules relating to non-public information.

In 2009, the Commission adopted rules in 39 CFR part 3007 establishing a procedure for non-public treatment of certain materials filed by the Postal Service and other persons under 39 U.S.C. 503 and 504.[1] Practice before the Commission has developed since 2009. Therefore, this rulemaking proposes to replace, in their entirety, the existing rules appearing in 39 CFR part 3007. Additionally, the Commission proposes to amend and move its rules regarding information requests to 39 CFR part 3001, subpart E. Further, the Commission proposes to update two rules appearing in 39 CFR part 3004 concerning the application of the Freedom of Information Act (FOIA)[2] to materials that are provided to the Commission with the reasonable belief that the materials are exempt from public disclosure. The proposed rules appear after the signature of this Order.

II. Background

The receipt, protection, and evaluation of non-public information are essential to the Commission's ability to carry out its regulatory duties under title 39 of the United States Code. For instance, to obtain approval for a competitive negotiated service agreement (NSA), the Postal Service must file commercially sensitive information with the Commission relating to customer identity; costs, revenues, and volumes; non-published rates; and certain technical details. This information allows the Commission to evaluate if the proposed NSA complies with the applicable statutory and regulatory requirements. Recognizing that public disclosure of certain information may be commercially harmful to the Postal Service, other persons, or both, existing 39 CFR part 3007 permits the filing of commercially sensitive information to be non-public (also known as ''sealed'' or ''under seal''). At the same time, acknowledging the need for transparency, existing 39 CFR part 3007 provides for procedures to allow for a person to request that non-public materials be disclosed to the public (also known as ''unsealed''). Moreover, existing 39 CFR part 3007 provides for procedures to allow for persons to request access to non-public materials, subject to protective conditions, in order to meaningfully participate in Commission proceedings.

Since the Commission adopted 39 CFR part 3007 in 2009, practice before the Commission has developed. For instance, proficiency with submitting documents online in a secure manner has improved. Also, since 2009, the Commission has received increasing amounts of non-public material, which may contain the proprietary material of the Postal Service, other persons, or both. For instance, the number of NSAs has increased significantly from 2009 to the present. In FY 2009, there were 23 Competitive domestic products consisting of NSAs in effect; in FY 2016, there were 568 Competitive domestic products consisting of NSAs in effect.[3]

Also, the rules appearing in existing 39 CFR part 3007 focus on circumstances in which the non-public material is filed by the Postal Service in formal Commission proceedings that are assigned a docket designation. Although that is the case in most circumstances, persons other than the Postal Service have also provided non-public materials directly to the Commission. For instance, after obtaining access to non-public materials, persons have used that data and information in their own submissions made under seal.[4] Additionally, persons have submitted their own proprietary material under seal.[5]

These developments have added complexity and necessitated the changes and clarifications proposed in these rules. Therefore, to better reflect modern practice, the Commission proposes to revise existing 39 CFR part 3007, which contains rules relating to non-public materials provided to the Commission. These proposed changes take into account a number of considerations including:

- Ensuring appropriate levels of protection and secure transmission of non-public materials,
- Maintaining appropriate levels of transparency,
- Reducing the barriers to submit non-public materials and participate meaningfully in Commission proceedings,
- Facilitating prompt Commission adjudication of unresolved motions relating to non-public materials,
- Requiring the provision of information adequate to determine the appropriate level of non-public treatment (if any), and
- Improving the organization and understandability of the rules.

Additionally, the Commission proposes amending and moving rules relating to information requests, which are contained in the existing §§ 3007.2 and 3007.3, to a proposed 39 CFR part 3001, subpart E. Also, the Commission proposes to modernize the content of these rules to better reflect developments in Commission practice.

Further, the Commission proposes conforming changes to the

[1] Docket No. RM2008–1, Order No. 225, Final Rule Establishing Appropriate Confidentiality Procedures, June 19, 2009.

[2] 5 U.S.C. 552.

[3] Docket No. ACR2009, Annual Compliance Determination, March 29, 2010, at 118; Docket No. ACR2016, Annual Compliance Determination, March 28, 2017, at 81.

[4] *See, e.g.,* Docket No. RM2016–12, Notice of Filing of UPS–LR–RM2016–12/1, UPS–LR–RM2016–12/NP1, and Application for Nonpublic Treatment, October 17, 2016.

[5] *See, e.g.,* Docket No. MT2016–1, Application of Pitney Bowes Inc. for Non-public Treatment of Response to Notice of Inquiry, May 12, 2016.

Commission's FOIA rules appearing in 39 CFR part 3004.

III. Summary of Proposed Changes

To improve organization and clarity, the Commission proposes to divide 39 CFR part 3007 into four subparts. The proposed division into four subparts reorders most of the content appearing in existing 39 CFR part 3007. Further, the Commission proposes to move rules related to information requests appearing in existing §§ 3007.2 and 3007.3 to proposed subpart E of 39 CFR part 3001. Therefore, to achieve a simple and logical progression, the Commission proposes to delete the existing 39 CFR part 3007 and insert the proposed rules.

Proposed subpart A of 39 CFR part 3007 contains general provisions. Proposed subparts B, C, and D of 39 CFR part 3007 identify the three major pathways to interact with the rules relating to non-public materials. Proposed subpart B of 39 CFR part 3007 contains rules applicable to submitting non-public materials and seeking non-public treatment. Proposed subpart C of 39 CFR part 3007 contains rules applicable to seeking access to non-public materials. Proposed subpart D of 39 CFR part 3007 contains rules applicable to seeking public disclosure of non-public materials.

In addition to the proposed division of 39 CFR part 3007 into four subparts, the Commission proposes other organizational improvements, which include splitting, deleting, or combining existing rules. For instance, existing § 3007.10 contains four paragraphs describing the requirements for the submission of non-public materials in their redacted (public) and unredacted (non-public) forms. The requirements pertaining to the redacted version appear in existing § 3007.10(b) and (c); the requirements pertaining to the unredacted version appear in existing § 3007.10(a) and (d). To improve clarity and organization, the Commission proposes two separate rules regarding the submission of the redacted version (proposed § 3007.202), and the unredacted version (proposed § 3007.203).

On the other hand, proposed §§ 3007.301 and 3007.304 dispense with the division for access requests that pertain to general proceedings versus access requests that pertain to Annual Compliance Determination-related proceedings appearing in existing §§ 3007.40, 3007.41, 3007.42, 3007.50, 3007.51, and 3007.52. Because the procedures involved do not vary if the access request involves general proceedings versus compliance proceedings, this proposed change simplifies the rules.

The Commission proposes to delete unnecessary rules in some instances. For example, the Commission dispenses with the use of the defined term ''authorized representative'' appearing in existing § 3007.1(a) because the term adds unnecessary complexity to the rules and does not precisely reflect the language of 39 U.S.C. 504(f)(1) and (2). The Chairman of the Commission is the presiding officer in proceedings conducted by the Commission *en banc.* The Chairman may also specifically designate a Commissioner or employee as a presiding officer to preside at hearings or conferences. 39 CFR 3001.5(e).

Proposed 39 CFR part 3007 makes linguistic updates aimed to improve clarity and precision. For instance, ''third party'' is used in existing 39 CFR part 3007 to refer to an individual or entity other than the Postal Service. Proposed 39 CFR part 3007 replaces ''third party'' with ''person other than the Postal Service'' throughout proposed 39 CFR part 3007 to better reflect this intent. This proposed change also better conforms with the usage of ''person'' and ''party,'' which are defined terms in existing 39 CFR part 3001. Person includes natural persons (individuals) and legal persons (entities). 39 CFR 3001.5(f). Party includes the Postal Service as well as certain other persons (complainants, appellants, and intervenors). 39 CFR 3001.5(g).

The Commission reviews the proposed rules in each proposed subpart below.

A. General Provisions

The Commission proposes to amend 39 CFR part 3007 to reflect that it contains procedures to submit, request access to, or seek public disclosure of non-public materials provided to the Commission by the Postal Service or any other person. The proposed amendments also reflect that 39 CFR part 3007 applies regardless whether non-public materials are provided to the Commission through a filing that would otherwise be governed under §§ 3001.9 and 3001.10 of this chapter, which prescribe procedural requirements for filing of a written document that is required or authorized by statute, rule, regulation, order of the Commission, or direction of the presiding officer.

Section 504(g) of title 39 provides the Commission with authority to promulgate rules applicable to non-public materials provided by the Postal Service—regardless whether those non-public materials are provided through a filing.[6] Because 39 U.S.C. 504(g) is silent as to the treatment of materials provided by persons other than the Postal Service, the Commission relies on its general authority under 39 U.S.C. 503 to promulgate rules applicable to non-public materials submitted by other persons. *See* 39 U.S.C. 503. Rules governing the treatment of non-public materials provided by persons other than the Postal Service are necessary for the Commission to carry out its functions under the Postal Accountability and Enhancement Act. Protection of such person's non-public materials is necessary to avoid inflicting competitive harm and impairing the ability of the Commission to obtain voluntary information from those persons.

Therefore, within the general provisions appearing in proposed subpart A of 39 CFR part 3007, the Commission proposes to explain the applicability of the rules (proposed § 3007.100) and to modify the defined terms (proposed § 3007.101). These proposed changes enable the procedures ensuring the secure transmission and confidential treatment of non-public materials appearing in proposed subpart B of 39 CFR part 3007 to apply to non-public materials regardless of who provides them to the Commission. The proposed changes also enable the public to request access or seek public disclosure of such materials through motions practice in accordance with proposed subparts C and D of 39 CFR part 3007.

The Commission observes that non-public materials may also be requested under FOIA in accordance with the procedures appearing in §§ 3004.30(d) (applicable to requests for records originating with the Postal Service) or 3004.30(e) (applicable to requests for records originating with third parties). The rules appearing in proposed subpart D of 39 CFR part 3007 are an alternative procedural mechanism to request public disclosure of materials that were provided to the Commission and claimed to be non-public.[7] The Commission may not deny a FOIA request simply because the materials are claimed to be non-public as defined under proposed § 3007.101(a). *See*

[6] Section 504(g) applies ''[i]f the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission . . . at the request of the Commission in connection with any proceeding or other purpose under this title, contains information which is described in section 410(c) [of title 39], or exempt from public disclosure under section 552(b) of title 5.'' 39 U.S.C. 504(g)(1).

[7] *See* Docket No. RM2009–6, Order Establishing Procedures for the Freedom of Information Act, October 23, 2009, at 7 (Order No. 322).

Order No. 322 at 7. When a submitter makes a claim for non-public treatment, the materials claimed to be non-public will be accorded a presumption of non-public treatment. *See* proposed § 3007.102(a). However, no claim for non-public treatment has been ''accepted'' by the Commission unless the Commission makes a determination of non-public status, either in response to a motion or *sua sponte. See* Order No. 322, at 7; *see also* proposed § 3007.103. The Commission further observes that when deciding whether to disclose materials claimed to be non-public, balancing the interests of the parties in accordance with 39 CFR part 3007 offers no less protection than applying the exemptions under FOIA. *See* Order No. 322 at 7.

FOIA sets forth nine categories of information that are exempt from public disclosure. Two categories are particularly applicable to the types of information that is provided to the Commission and claimed to be non-public. First, 5 U.S.C. 552(b)(4) exempts ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' Second, 5 U.S.C. 552(b)(3) exempts information that is specifically exempted by another statutory provision, such as 39 U.S.C. 410(c)(2). Section 410(c)(2) of title 39 provides that the Postal Service shall not be required to disclose ''information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed.'' These categories align with the types of information protected under 39 U.S.C. 504(g).[8]

Proposed subpart A of 39 CFR part 3007 also incorporates several rules appearing in existing 39 CFR part 3007 concerning the treatment of non-public materials (proposed § 3007.102), types of Commission action to determine the non-public treatment to accord to materials that are claimed to be non-public (proposed § 3007.103), and the standard for determining whether to publicly disclose non-public materials (proposed § 3007.104).

B. Submitting Non-Public Materials and Seeking Non-Public Treatment

Proposed subpart B of 39 CFR part 3007 contains provisions applicable to submitting non-public materials and seeking non-public treatment. The applicable procedures are unified to reflect their applicability to all submitters, regardless whether the materials are submitted by the Postal Service or other persons (proposed § 3007.200). The Commission proposes to set forth modernized and streamlined procedures and requirements for the application for non-public treatment (proposed § 3007.201), redacted version of the non-public materials (proposed § 3007.202), and unredacted version of the non-public materials (proposed § 3007.203). These proposed procedures would better accommodate the increasing volume of non-public material and technological advances in secure transmission.

The Commission retains and clarifies the protections available for any person with a proprietary interest in non-public materials that are submitted by someone else to the Commission (proposed § 3007.204). The Commission also proposes to add a rule to address instances in which non-public materials are inadvertently filed in a public document (proposed § 3007.205).

C. Seeking Access to Non-Public Materials

Proposed subpart C of 39 CFR part 3007 contains provisions applicable to seeking access to non-public materials, subject to protective conditions. The Commission proposes rules that set forth who may have access and how such access may be obtained (proposed §§ 3007.300 and 3007.301). The Commission also clarifies the obligations of a person who has obtained access to non-public materials. The Commission sets forth proposed rules applicable to the non-dissemination, use, and care of non-public materials (proposed § 3007.302), the potential sanctions for violating protective conditions (proposed § 3007.303), the procedural requirements associated with terminating and amending access (proposed § 3007.304), and the procedural requirements associated with producing non-public materials in non-Commission proceedings (proposed § 3007.305).

The Commission also proposes to move the three template forms appearing in existing Appendix A to part 3007, which aid persons seeking or certifying the termination of access to non-public materials, to proposed Appendix A to subpart C of part 3007. Changes are proposed to conform the content of these three template forms to the proposed rules and to improve readability.

D. Seeking Public Disclosure of Non-Public Materials

Proposed subpart D of 39 CFR part 3007 contains provisions applicable to seeking public disclosure of non-public materials—that is, requesting that the non-public treatment not be accorded to the materials. The Commission proposes a rule setting forth the procedure for a person to request that non-public materials be disclosed to the public through a motion (proposed § 3007.400). The Commission proposes to create a rule to address the administration and public disclosure of materials for which non-public treatment has expired after the passage of 10 years (proposed § 3007.401).

E. Information Requests

The Commission proposes to move material appearing in existing §§ 3007.2 and 3007.3, which relate to information requests, out of 39 CFR part 3007. Information requests may pertain to public or non-public material. Therefore, the Commission proposes to move these procedural requirements to 39 CFR part 3001 in a new proposed subpart E. The Commission also proposes revisions to modernize these procedures to better reflect current practice before the Commission.

F. Conforming Changes to 39 CFR Part 3004

The Commission proposes to make conforming changes to reflect that the submission procedures appearing in subpart B of 39 CFR part 3007 apply to all instances in which materials that are provided to the Commission with the reasonable belief that the materials are exempt from public disclosure.

IV. Section-by-Section Analysis of the Proposed Changes to 39 CFR Part 3007

As described below, the Commission proposes to amend 39 CFR part 3007 by replacing the existing heading and text of the rules.

Proposed heading identified in 39 CFR part 3007. The Commission proposes to revise the heading to reflect that 39 CFR part 3007 applies to non-public materials provided to the Commission rather than merely the treatment of non-public material filed by the Postal Service.

A. Proposed Subpart A of Part 3007—General Provisions

Proposed subpart A of part 3007. The Commission proposes to add subpart A to 39 CFR part 3007 containing general provisions.

Proposed § 3007.100 Applicability. Proposed § 3007.100 identifies that proposed 39 CFR part 3007 applies

[8] Section 504(g) applies ''[i]f the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission . . . contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5.'' 39 U.S.C. 504(g)(1).

when: (1) The Postal Service claims that any materials it provides to the Commission contain non-public information; (2) any other person claims that any materials provided to the Commission contain non-public information; (3) the Commission is determining what type and degree of confidential treatment should be accorded to the materials claimed to be non-public; or (4) the Commission is determining what protective conditions should apply to those accessing non-public materials.

Proposed § 3007.101 Definitions. Proposed § 3007.101(a) is based on the definition of non-public materials appearing in existing § 3007.1(b).

Proposed § 3007.101(a) modifies the existing definition of non-public materials to reflect the inclusion of materials that are claimed to contain information that is described in 39 U.S.C. 410(c) or exempt from public disclosure under 5 U.S.C. 552(b). Such information is protectable if provided by the Postal Service to the Commission pursuant to 39 U.S.C. 504(g)(1), 3652(f)(1), or 3654(f)(1). Such information is defined as non-public materials under existing § 3007.1(b) if the claim for non-public treatment is made by the Postal Service. This proposed change reflects the Commission's practice to treat such information as non-public material regardless of who submits the materials and regardless of who makes the claim for non-public treatment. This proposed change clarifies that non-public information includes commercially sensitive information, whether it belongs to the Postal Service or any other person.[9]

Proposed § 3007.101(a) adds that materials cease to be non-public (except for inadvertent public filings corrected in accordance with proposed § 3007.205) if the person making the submission publicly discloses the materials, subject to the consent of each affected person with a proprietary interest in the materials (if applicable). This proposed change is made to reflect that consensual voluntary public disclosure of materials that were initially claimed to be non-public has been used to resolve issues of whether public or non-public treatment should apply in some instances. This proposed change also protects the interests of a person other than the submitter that has a proprietary interest in the materials in those instances where the interests of the person making the submission may not be the same as the interests of another person other than the submitter that has a proprietary interest in the materials.

Proposed § 3007.101(b) provides a definition for the term submitter. The usage of this term helps to unify several procedural rules that apply to the Postal Service and any other person that provides non-public materials to the Commission. Consistent with § 3001.5(f) of this chapter, this proposed rule uses person to include both a natural person (individual) and a legal person (entity).[10]

Proposed § 3007.102 Treatment of non-public materials. Proposed § 3007.102(a) incorporates existing § 3007.23, which informs the reader that the Commission will not disclose or allow access to non-public materials, except as provided by 39 CFR part 3007, and adds a cross-reference to the Commission's FOIA provisions described in 39 CFR part 3004. Proposed § 3007.102(b) retains the content of existing § 3007.60.

Proposed § 3007.103 Commission action to determine non-public treatment. Proposed § 3007.103 informs the reader about and provides examples of the types of action that the Commission may take after receiving non-public materials. Proposed § 3007.103 informs the reader that the Commission may seek additional information to determine the non-public treatment, if any, to be given. Consistent with practice, proposed § 3007.103 identifies examples such as the issuance of information requests, preliminary notices, or interim orders. Proposed § 3007.103 also states that the Commission may issue an order containing a description of the non-public treatment granted and timeframe for which non-public treatment is accorded (if any). Proposed § 3007.103 also states that the Commission may amend the non-public treatment accorded (if any). For example, an amendment may occur if a person files a motion for disclosure under proposed § 3007.400 or § 3007.401. Proposed § 3007.103 also provides that issuance of the order or amendment may occur without a motion.

The procedures described in proposed § 3007.103 remain consistent with existing § 3007.32(a). The process contained in existing § 3007.32(b) through (d) is eliminated because if a preliminary notice is issued, it shall specify the time allotted for response and reply (if any).

Proposed § 3007.104 Standard for public disclosure of non-public materials. Proposed § 3007.104 incorporates the content appearing in existing § 3007.33. Proposed § 3007.104(a) modifies the language appearing in existing § 3007.33(a) because the existing rule did not appear to contemplate situations where materials containing Postal Service non-public information were submitted by another person (such as a person granted access to non-public Postal Service materials) or were provided by the Postal Service outside of a filing. Proposed § 3007.104(b) modifies the content of existing § 3007.33(b) by replacing the reference to ''a third party'' to more precisely reflect that rule applies to material that is claimed to be non-public because it contains the proprietary information of any person other than the Postal Service.

B. Proposed Subpart B of Part 3007—Submitting Non-Public Materials and Seeking Non-Public treatment

Proposed subpart B of part 3007. The Commission proposes to add subpart B to 39 CFR part 3007 containing rules applicable to submitting non-public materials to the Commission and seeking non-public treatment of those materials.

Proposed § 3007.200 General requirements for submitting non-public materials and seeking non-public treatment. Proposed § 3007.200 explains the process to provide non-public materials to the Commission applicable to all submitters. Proposed § 3007.200(a) requires the provision of three things on the same business day—an application for non-public treatment, a redacted version of the non-public materials, and an unredacted version of the non-public materials. Consistent with existing practice, the application for non-public treatment and the redacted version of the non-public materials are public documents. Consistent with existing practice, the unredacted version of the non-public materials shall be submitted under seal. Proposed § 3007.200(a) unifies aspects of the content of existing

[9] Such information is protectable under 5 U.S.C. 552(b)(4), which exempts from public disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.''

Further, if the information is provided by the Postal Service, then the information is also protectable under 5 U.S.C. 552(b)(3) and 39 U.S.C. 410(c)(2). Section 552(b)(3) of title 5 exempts from public disclosure information that is specifically exempted by another statutory provision, such as 39 U.S.C. 410(c)(2). Section 410(c)(2) of title 39 provides that the Postal Service shall not be required to disclose ''information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed.''

[10] 39 CFR 3001.5(f) provides ''Person means an individual, a partnership, corporation, trust, unincorporated association, public or private organization, or governmental agency.''

§§ 3007.10, 3007.20(a), 3007.21(a), and 3007.22(a).

Proposed § 3007.200(a) also addresses situations that are not adequately addressed in the existing rules. Existing §§ 3007.20(a) and 3007.21(a) require the Postal Service to file an application whenever it files non-public material. However, the existing rules do not clearly address the procedural requirements applicable if the Postal Service submits non-public material to the Commission outside of a filing made in accordance with §§ 3001.9 and 3001.10 of this chapter. Such submissions are permissible, subject to the Commission's *ex parte* policy appearing in 39 CFR part 3008. Requiring that the Postal Service submit an application for non-public treatment, a redacted version of the non-public materials, and an unredacted version of the non-public materials would facilitate the Commission's determination of non-public treatment (if any) that should be accorded to those materials and would better ensure that confidential treatment is properly accorded to those non-public materials. Moreover, those proposed requirements would facilitate the Commission's resolution of motions practice related to those materials.

Moreover, although existing § 3007.22(a) sets forth the requirements of an application made by a third party, that existing rule appears to contemplate situations where a person other than the Postal Service files an application for non-public treatment of a Postal Service filing that contains the person's non-public information. This option is preserved under proposed § 3007.204. However, the existing rules are silent regarding whether a person other than the Postal Service that submits non-public materials (either by formal filing or by informal submission) must include an application. Existing § 3004.70(a) reflects that a third party submitting materials claimed to be non-public to the Commission ''may'' lodge an application for non-public treatment. Requiring the submission of an application by any submitter of non-public materials would promote fairness and would facilitate the Commission's determination of the type and degree of non-public treatment (if any) that should be accorded to those materials.

Proposed § 3007.200(b) requires that before submitting non-public materials to the Commission, each submitter contact any affected person who may have a proprietary interest in non-public materials. This proposed rule expands the application of existing § 3007.20(b) to Postal Service submissions made outside formal filings and to submissions made by persons other than the Postal Service. The proposed change would better ensure the protection of an affected person's proprietary material by giving the affected person an opportunity to file an application for non-public treatment and address its confidentiality concerns directly with the Commission.

Proposed § 3007.201 Application for non-public treatment. Proposed § 3007.201(a) retains the same burden of persuasion appearing in existing § 3007.21(b) and expands it to apply to all submitters.

Proposed § 3007.201(b) sets forth the required contents of an application. Existing §§ 3007.21 and 3007.22 require slightly different content requirements based on whether the application is made by the Postal Service or any other person. Proposed § 3007.201(b) makes the requirements uniform. In addition to simplifying the procedural rules, this better ensures that the Commission will receive adequate justification of an application. The information sought will aid the Commission's determination of the non-public treatment, if any, to be accorded to the materials.

The proposed uniform content requirements appearing in proposed § 3007.201(b)(1), (3) through (8) remains substantially the same as existing § 3007.21(c)(1), (3) through (8). Proposed § 3007.201(b)(1), (3) through (8) contain changes to improve clarity and update cross-references.

Proposed § 3007.201(b)(2) is based on existing § 3007.21(c)(2), which requires the Postal Service to identify any third party known to have a proprietary interest in the materials or a designated Postal Service employee to notify each affected third-party (if identification of the third party is sensitive). Proposed § 3007.201(b)(2) applies this requirement to all applications (even if made by a person other than the Postal Service) and modifies this requirement as follows.

Proposed § 3007.201(b)(2) requires the application to identify a foundational fact—whether the submitter, any person other than the submitter, or both have an interest in the non-public materials. This proposed change would improve transparency, especially for persons seeking access or public disclosure of the non-public materials. This proposed change is reflective of the growing complexity related to the non-public materials submitted to the Commission. In simple scenarios, the non-public material belongs solely to the submitter. In more complex instances, the non-public material is a reproduction of the proprietary information of a business partner of the submitter or non-public material to which the submitter has granted access. Scenarios that are even more complex exist when the submitter manipulates the proprietary information of another person and comingles it with the submitter's own proprietary information.

Depending on whether the proprietary interest of the submitter, any person other than the submitter, or both is implicated, the application must provide contact information for an individual designee of the submitter pursuant to § 3007.201(b)(2)(i), each person other than the submitter pursuant to § 3007.201(b)(2)(ii), or both pursuant to § 3007.201(b)(2)(iii).

If the submitter's interest is implicated, proposed § 3007.201(b)(2)(i) requires that the application identify an individual (such as an employee, executive, or attorney) designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the materials.

If the proprietary interest of any person other than the submitter is implicated, proposed § 3007.201(b)(2)(ii) requires that the application identify each affected person. Consistent with existing § 3007.21(c)(2), the application need not identify each affected person (other than the submitter) if identification would be sensitive. The application also need not identify each affected person (other than the submitter) if identification would be impracticable. This proposed change reflects situations not contemplated by existing § 3007.21(c)(2), such as if multiple persons speaking multiple languages were affected.[11] Consistent with existing § 3007.21(c)(2), if each affected person is not identified, the submitter shall identify an individual designated by the submitter to provide notice to each affected person. Moreover, if the submitter does not identify each affected person, whether that identification were asserted to be sensitive or impractical, proposed § 3007.201(b)(2)(ii) requires that the application provide an explanation. This proposed change better ensures that the sensitivity or impracticability exceptions to identifying each affected person would not be overused and would be consistent with the past instances of when impracticability was

[11] *See, e.g.,* Docket No. R2017–1, Notice of the United States Postal Service of Filing USPS–LR–R2017–1/NP1, October 12, 2016, Attachment 1 at 2 n.2.

asserted as a basis not to identify each affected person.

If the proprietary interest of both the submitter and another person are implicated, proposed § 3007.201(b)(2)(iii) requires the application to comply with the requirements of both § 3007.201(b)(2)(i) and (ii). Proposed § 3007.201(b)(2)(iii) permits the submitter to designate the same individual to serve as the designated point of contact on behalf of the submitter and any other affected person whose identification is asserted to be sensitive or impracticable. Designating the same individual would likely reduce the burden on the submitter and any person attempting to contact the designee.

Proposed § 3007.201(c) allows incorporation by reference to streamline applications that support the submission of non-public materials that have previously been claimed to be non-public by a prior application. Incorporation by reference may be particularly appropriate if a person granted access to non-public materials submitted by another person reproduces or otherwise uses those non-public materials in a submission to the Commission. In such instances, referring back to the original application would likely be sufficient to meet the burden of persuasion, identify the persons with a proprietary interest in the non-public materials, and reduce the burden involved in drafting the application. Proposed § 3007.201(c) imposes requirements to ensure that the prior application is clearly identified, which facilitates evaluation of the prior application by the members of the public and the Commission. Any application that incorporates by reference a prior application that is accessible through the Commission's website (*http://www.prc.gov*) must provide the date, docket number, and name of the filer of the prior application. In all other circumstances, the application must attach the document that is being incorporated by reference.

Proposed § 3007.202 Redacted version of the non-public materials. Proposed § 3007.202 provides the requirements applicable to the submission of the redacted (public) version of the non-public materials.

Consistent with existing § 3007.10(c), proposed § 3007.202(a) explains that submitters must graphically redact (blackout) the material that is claimed to be non-public. Proposed § 3007.202(a) also incorporates the prohibition on excessive redactions (blacking out material that is not non-public), which appears in existing § 3007.10(b), and expands its applicability to all submitters. This proposed rule will promote fairness and improve transparency.

Proposed § 3007.202(b) incorporates the requirement that the Postal Service justify the use of any other redaction method and specifically identify the alterations made to the document, which appears in existing § 3007.10(c), and expands its applicability to all submitters so as to promote fairness and improve transparency. Proposed § 3007.202(b) modifies existing requirements, in § 3007.10(c), to justify the use of another redaction method, stating with particularity the competitive harm associated with using the blackout method, to also allow the application to state with particularity the practical difficulty associated with using the blackout method. Based on experience under the existing rules, the Commission expects that the use of a redaction method other than the blackout method will continue to be rare.

Consistent with existing § 3007.10(b), proposed § 3007.202(c) provides that electronic versions of redacted materials must be filed in a searchable format. Proposed § 3007.202(c) permits the use of a non-searchable format only if accompanied by a certification that providing a searchable format would be impracticable. Based on experience under the existing rules, the Commission expects that such an occasion would occur rarely as most non-public materials are filed in .doc, .pdf, .xls, or similar formats.

Proposed § 3007.203 Unredacted version of the materials. Proposed § 3007.203 sets forth the manner for submission of the unredacted version of the non-public materials.

Consistent with existing § 3007.10(d), proposed § 3007.203(a) requires that upon submitting the unredacted version of the non-public materials, each page or portion of a paper or electronic version be marked in a manner reasonably calculated to alert custodians to the confidential nature of the materials. Consistent with existing § 3007.10(a), proposed § 3007.203(a) also reflects that non-public materials may not be submitted through the Filing Online method accessible through the Commission's public website (*http://www.prc.gov*). This is a public website and does not allow for the submission of non-public documents to the Commission.

Proposed § 3007.203(b) sets forth additional requirements pertaining to the filing of the unredacted version of the non-public materials. Proposed § 3007.203(b) applies in lieu of §§ 3001.9 and 3001.10 of this chapter, which prescribe procedural requirements for filing of a written document that is required or authorized by statute, rule, regulation, order of the Commission, or direction of the presiding officer. Such filings made in accordance with §§ 3001.9 and 3001.10 of this chapter (either using the Filing Online method accessible through the Commission's public website or via hand delivery) are available to the public. Therefore, proposed § 3007.203(b) sets forth how such filings shall be performed for the unredacted versions of the non-public materials.

Proposed § 3007.203(b)(1) requires filing of the unredacted version of the non-public materials in sealed envelopes marked ''Confidential. Do Not Post on Web,'' consistent with existing § 3007.10(a). Existing § 3007.10(a) requires filing of both electronic (via compact disc (CD) or digital video disc (DVD)) and hard copy (paper) versions of the non-public materials. To reduce the burden, proposed § 3007.203(b)(1) allows the filer to provide only the electronic version. If it is impracticable to submit the electronic version, proposed § 3007.203(b)(1) permits the filer to provide the paper version instead.

The Commission is exploring the use of an alternative system to allow secure online transmission of non-public materials. This alternative system would significantly increase speed and reduce the overall burden, especially for submissions that are frequent, voluminous, or both. Therefore, proposed § 3007.203(b)(2) sets forth the requirements associated with use of any alternative system approved by the Commission. Proposed § 3007.203(b)(2) provides that the Secretary has the authority to approve the use of a secure alternative system to file non-public materials online. It also states that no other system may be used to file non-public materials online. It also provides the Secretary with authority to set forth any minimum requirements associated with using an alternative system. If a filer fails to comply with any of the Secretary's requirements, the Secretary would have discretion to impose requirements specific to a particular filer. The Secretary may also revoke a filer's eligibility to use the alternative system and to require the filer to provide non-public materials in accordance with proposed § 3007.203(b)(1).

Proposed § 3007.204 Protections for any other person with a proprietary interest. Proposed § 3007.204 incorporates existing § 3007.20(c), which informs the reader that any

person other than the submitter with a proprietary interest in non-public materials filed with the Commission may lodge an application for non-public treatment. Proposed § 3007.204 expands the applicability of this requirement to involve submissions made outside of filings and illustrates the procedural mechanisms by which an affected person may raise confidentiality concerns with the Commission.

Proposed § 3007.205 Non-public materials inadvertently filed publicly. Proposed § 3007.205 pertains to instances in which a person discovers that information that could have been filed non-publicly is contained within a public filing made in accordance with §§ 3001.9 and 3001.10 of this chapter. Proposed § 3007.205 instructs the person to notify Dockets by telephone to remove the non-public material from the publicly available material. The person must file an application for non-public treatment and the non-public materials within one business day of this request to Dockets. Proposed § 3007.205 states that the Secretary has the discretion to impose additional filing requirements on any filer that repeatedly invokes this rule. The Commission expects this proposed rule will be invoked rarely. The Commission website is public and the Commission expects that filers will transmit documents using a reasonable degree of care for any non-public information. This proposed rule outlines a process to minimize exposure of sensitive information that may occur due to a filer's error.

C. Proposed Subpart C of Part 3007—Seeking Access to Non-Public Materials

Proposed subpart C of part 3007. The Commission proposes to add subpart C to 39 CFR part 3007 containing rules applicable to seeking access to non-public materials. These rules allow non-public materials to remain under seal and allow specific persons to access the materials subject to protective conditions.

Proposed § 3007.300 Eligibility for access to non-public materials. Proposed § 3007.300(a) incorporates existing § 3007.24(a), which provides that non-public materials may be disclosed to Commission and reviewing court personnel. Proposed § 3007.300(a) adds clarifying language to indicate that such disclosure may be made without the need for issuance of an order.

Proposed § 3007.300(b) codifies the standard of ineligibility for access that was included in the sample Statement of Protective Conditions provided in existing Appendix A to part 3007. Proposed § 3007.300(b) provides that persons involved in competitive decision-making shall not be granted access to non-public materials and defines the terms consistent with the language appearing in existing Appendix A to part 3007. Codifying this standard in the proposed rules, rather than only in the Statement of Protective Conditions, will enhance uniformity and protection against competitive harm without impeding the ability to participate in Commission proceedings.

Proposed § 3007.300(c) mirrors existing § 3007.24(b) by explaining the circumstances and cross-referencing the relevant provision for other persons to obtain access (via proposed § 3007.301). Existing §§ 3007.40(a) and 3007.50(a) provide that a person may request access to non-public materials during a proceeding or relevant to compliance under 39 U.S.C. 3653. Through past practice, the Commission has determined that 3007.50(a) applies while a 39 U.S.C. 3653 compliance proceeding (proceedings using the designation ''Docket No. ACR'') is pending.[12] Proposed § 3007.300(c) unifies existing §§ 3007.40(a) and 3007.50(a) to apply to an access request made for the purpose of aiding participation in a pending Commission proceeding (including a compliance proceeding). Consistent with past practice, proposed § 3007.300(c) also expands the scope to allow a person to seek access for the purpose of aiding the initiation of a proceeding before the Commission.[13] Any person seeking to view non-public materials for other purposes may file a motion for disclosure pursuant to proposed § 3007.400 or § 3007.401 or a FOIA request under 39 CFR part 3004.

Proposed § 3007.301 Motion for access to non-public materials. Proposed § 3007.301 concerns requests for access to non-public materials. This proposed rule combines the material of existing §§ 3007.40, 3007.42, 3007.50, and 3007.52, which have separate access rules for non-public materials based on whether or not the person seeking access seeks to use the materials in a compliance proceeding or other type of proceeding. Because this distinction does not produce a material difference in procedures, the Commission proposes to unify this content for simplicity.

Proposed § 3007.301(a) combines language appearing in existing §§ 3007.40 and 3007.50, which instruct the person seeking access to file a motion. Proposed § 3007.301(a) also adds an instruction that any part of the motion revealing non-public information must be filed under seal.

Proposed § 3007.301(a) also adds instructions pertaining to the docket in which the motion must be filed. The motion must be filed in the docket in which the non-public materials sought were filed or are intended to be used, if such a docket (open or closed) exists. The Commission expects that an existing docket (open or closed) would accommodate most, and quite likely all, motions for access filed. However, if no docket (open or closed) meeting either of those conditions exists, then the motion shall be filed in the G docket for the applicable fiscal year.

Presently, any document filed with the Commission that is not associated with specific docket designation is by default categorized as a periodic report.[14] The Commission creates the G docket designation to serve as the administrative default designation. If the Commission determines that it is more convenient, expeditious, or otherwise appropriate to resolve any issue arising in a G docket in a different docket(s), the Commission may consolidate or sever proceedings. 39 CFR 3001.14.

The Commission expects that the filing of a motion for access in a G docket would be rare—limited to situations in which the materials sought were not filed in an existing docket (open or closed) and the movant proposes to use the materials to initiate a Commission proceeding. Any movant considering filing in a G docket should telephone Dockets personnel to discuss whether a more appropriate docket exists.

Proposed § 3007.301(b) sets forth the content requirements for the motion based on the material appearing in existing §§ 3007.40(a) and 3007.50(a). Proposed § 3007.301(b)(1) requires identification of the non-public documents for which access is sought. Consistent with existing §§ 3007.40(a)(1) and 3007.50(a)(1), proposed

[12] *See, e.g.,* Docket No. MT2016–1, Order No. 3319, Order Authorizing Market Test of Global eCommerce Marketplace (GEM) Merchant, May 25, 2016, at 24 n.41; Docket Nos. MC2014–3 and CP2014–3, Order No. 2047, Order Denying Motion Requesting Access to Non-public Materials, April 11, 2014 (denying as premature a motion for access seeking non-public pricing information and estimated volumes and costs to determine compliance of the NSA at issue because the motion was filed before the filing of the applicable Annual Compliance Report).

[13] *See, e.g.,* Docket No. ACR2014, United Parcel Service, Inc.'s Motion Requesting Continued Access to Non-public Materials Under Protective Conditions, March 27, 2015, at 2.

[14] Existing docket designations are: A (Post office appeals), ACR (Annual Compliance Review), C (complaint), CP (competitive products), IM (international mail), MC (mail classification), MT (market test), N (nature of service), PI (public inquiries), R (rate), RM (rulemaking), SS (special study), and T (tax).

§ 3007.301(b)(2) requires a detailed statement justifying the access request.

Proposed § 3007.301(b)(2) also specifies the minimum information necessary to justify the request, which may vary if the movant proposes to use the materials in a pending Commission proceeding or to initiate a Commission proceeding.

Proposed § 3007.301(b)(2)(i) pertains to using the materials in a pending Commission proceeding. In this instance, the motion must identify all proceedings in which the movant proposes to use the materials and how those materials are relevant to those proceedings. This proposed rule is designed to provide additional guidance to movants regarding the justification required for access requests. Also, because in past practice, parties have sought to use non-public materials in multiple dockets, this proposed rule is designed so as to ensure that adequate justification is provided relating to each docket at issue.

Proposed § 3007.301(b)(2)(ii) pertains to using the materials to aid initiation of a proceeding before the Commission. In that instance, the justification required must describe the subject of the proposed proceeding, how the materials sought are relevant to that proceeding, and the expected timeframe to initiate that proceeding. This proposed rule is designed to provide additional guidance to movants regarding the justification required in these instances.

Proposed § 3007.301(b)(3) remains consistent with existing requirements, in §§ 3007.40(a)(2) and 3007.50(a)(2), to list relevant affiliations.

Proposed § 3007.301(b)(4) requires the movant to indicate whether actual notice has been provided to each person identified in the application under § 3007.201(b)(2). This proposed change will make it clear whether the expedited deadline for a response under proposed § 3007.301(c) applies.

If the motion states that actual notice has been provided to any person, the motion should identify the individual receiving actual notice, the date and approximate time, and the method of notification. This proposed identification requirement should help to protect the interests of the submitter and any person with a proprietary interest. Moreover, this proposed identification requirement should help to resolve motions seeking non-public materials that were submitted years ago—for instance, if there is a successor to the individual designated in the application.

If the motion states that actual notice has been provided to any person, the motion should also state whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by such person. This proposed change would expedite the resolution of motions where it is represented that motion is uncontested (in whole or in part).

Proposed § 3007.301(b)(5) requires attachment of a description of protective conditions executed by the movant's attorney or non-attorney representative. Proposed § 3007.301(b)(6) requires attachment of an executed certification to comply with protective conditions from each person (and any individual working on behalf of that person) for whom access is sought. Both of these requirements may be satisfied by using the proposed template Protective Conditions Statement and Certification to Comply with Protective Conditions included in Proposed Appendix A to subpart C of part 3007.

Proposed § 3007.301(c) sets the response period at 3 business days if there has been actual notice. In all other circumstances, the response period remains 7 calendar days. These response timeframes remains consistent with existing §§ 3007.40(b) and 3007.50(b).

Proposed § 3007.301(d) remains consistent with existing §§ 3007.40(c) and 3007.50(c) regarding reply.

Proposed § 3007.301(e) sets forth information related to the Commission's ruling. Consistent with past practice, proposed § 3007.301(e) explains that the Commission may rule on an uncontested access motion at any time after receiving the motion.[15] Consistent with past practice, proposed § 3007.301(e) provides that the Commission may rule on an unresolved access motion at any time after the response period has expired. Proposed § 3007.301(e) sets forth the standard for the Commission ruling, which remains consistent with the standard appearing in existing §§ 3007.42 and 3007.52. Proposed § 3007.301(e) states that access shall begin after issuance of the order setting forth all protective conditions.

Proposed § 3007.302 Non-dissemination, use, and care of non-public materials. Proposed § 3007.302 sets forth the duties of persons granted access to non-public materials in Commission proceedings. Proposed § 3007.302(a) remains consistent with existing § 3007.62(a) by prohibiting dissemination of non-public materials to any person not granted access by the Commission under proposed §§ 3007.300 (Commission and reviewing court personnel) or 3007.301 (persons granted access by order of the Commission). Proposed § 3007.302(b) remains consistent with existing § 3007.25(a) by limiting the use of non-public materials to only the purpose for which the non-public materials are supplied. Proposed § 3007.302(c) is based on the prohibition on allowing unauthorized persons to have access to the materials, which appears in existing § 3007.25(b). Proposed § 3007.302(c) also incorporates the standard of care appearing in existing Appendix A to part 3007, which requires a person granted access to non-public materials to use reasonable care to prevent the unauthorized disclosure of non-public materials.

Proposed § 3007.303 Sanctions for violating protective conditions. Proposed § 3007.303(a) remains consistent with existing § 3007.62(a) relating to the sanctions for violations of the order granting access subject to protective conditions. Proposed § 3007.303(b) adapts the language of existing § 3007.62(b). Existing § 3007.62(b) refers only to the Postal Service. To reflect that parties other than the Postal Service may be adversely affected by violations of protective conditions, proposed § 3007.303(b) states that the Commission's rules do not impair the ability of any person, including the Postal Service, to pursue other remedies available under the law related to violations of an order granting access subject to protective conditions.

Proposed § 3007.304 Termination and amendment of access to non-public materials. Proposed § 3007.304(a) combines the material appearing in existing §§ 3007.41 and 3007.51, which relate to the termination of access to non-public materials. Existing §§ 3007.41 and 3007.51 divide the rules applicable to termination of access depending on whether the non-public materials at issue are relevant to general proceedings or compliance proceedings. Proposed § 3007.304(a) treats termination procedures consistently in both instances.

Proposed § 3007.304(a)(1) remains consistent with the timeframes for the termination of access described in existing §§ 3007.41(a)(1) and 3007.51(a)(1).

Proposed § 3007.304(a)(2) remains consistent with the procedural requirements upon termination described in existing §§ 3007.41(c) and 3007.51(c). Proposed § 3007.304(a)(2) provides that the applicable non-public materials must be destroyed or returned

[15] *See, e.g.,* Docket Nos. ACR2016 and RM2017–1, Order No. 3757, Order Granting Unopposed Motion for Access, January 24, 2017 (granting access one day after filing of the motion, which contained a representation that the motion was unopposed).

to the Commission and notification of compliance must be filed with the Commission. As described below, the Commission proposes revisions to the applicable template form to be filed with the Commission upon termination of access in Appendix A to subpart C of part 3007.

Proposed § 3007.304(b) sets forth the procedure for a person to seek amendment of any protective conditions. This proposed rule aims to facilitate prompt resolution of common issues such as seeking access for additional time (as encompassed under existing §§ 3007.41(b) and 3007.51(b)) or for an additional employee or consultant.

Proposed § 3007.305 Producing non-public materials in non-Commission proceedings. Proposed § 3007.305 clarifies existing § 3007.61.

Proposed § 3007.305(a) retains the existing 2-day notification requirement, in § 3007.61(a), imposed upon any person who is the target of a subpoena or order to produce non-public materials that were obtained in a Commission proceeding. Existing § 3007.61(a) requires the target to notify the Postal Service and does not adequately address situations in which the materials were submitted by or claimed to be non-public by a person other than the Postal Service. Therefore, proposed § 3007.305(a) requires the target to notify all persons identified in the underlying application for non-public treatment pursuant to proposed § 3007.201(b)(2). The proposed change better serves the purpose of this rule, which is to give the affected person the opportunity to object to the production or to seek a protective order or other relief.

Proposed § 3007.305(b) clarifies the language of existing § 3007.61(b). Proposed § 3007.305(b) requires a good faith effort to obtain protective conditions at least as effective as those ordered by the Commission regarding the disclosure of non-public materials in non-Commission proceedings.

Proposed § 3007.305(c) clarifies the language of existing § 3007.61(c). Proposed § 3007.305(c) provides that unless overridden in a non-Commission proceeding, the protective conditions ordered by the Commission will remain in effect.

Proposed Appendix A to subpart C of part 3007—Template Forms. Existing Appendix A to part 3007 contains three template forms relating to seeking or terminating access to non-public materials. The Commission proposes to move this content to subpart C, which pertains to access to non-public materials. To better reflect its content, the Commission proposes to update the heading identified in existing Appendix A to part 3007, ''Statement of Compliance with Protective Conditions,'' to ''Template Forms.''

Revisions are proposed to the content of each proposed template form to conform with the changes to the rules appearing in proposed 39 CFR part 3007 and to improve readability. The first proposed template form is a Protective Conditions Statement to aid compliance with proposed § 3007.301(b)(5), which requires attachment of a description of protective conditions to a motion for access to non-public materials. The second proposed template form is a Certification to Comply with Protective Conditions to aid compliance with proposed § 3007.301(b)(6), which requires attachment of a certification to comply with protective conditions executed by each person (and any individual working on behalf of that person) seeking access to non-public materials. The third proposed template form is a Certification of Compliance with Protective Conditions and Termination of Access to aid compliance with proposed § 3007.304(a)(2), which requires the filing of certifications executed by each person (and any individual working on behalf of that person) granted access to non-public materials upon the termination of access.

D. Proposed Subpart D of Part 3007—Seeking Public Disclosure of Non-Public Materials

Proposed subpart D of part 3007. The Commission proposes to add subpart D to 39 CFR part 3007 containing rules applicable to seeking public disclosure of non-public materials.

Proposed § 3007.400 Motion for disclosure of non-public materials. Proposed § 3007.400 applies to situations when a person seeks to challenge the non-public treatment claimed for materials—that is, to have the materials disclosed to the public, also known as ''unsealed.''

Proposed § 3007.400(a) specifies that this rule applies to materials for which the non-public status remains active—either because the non-public status has not expired or has been extended by order of the Commission.

Proposed § 3007.400(b) explains that a request to have non-public materials unsealed shall be made by motion and sets forth the contents of a motion. Consistent with existing § 3007.31(a), the motion must explain why the materials should be made public and address any pertinent rationale(s) provided in the application for non-public treatment. Also, consistent with existing § 3007.31(a), the motion may not publicly disclose the information that is designated as non-public pending resolution of the motion.

Proposed § 3007.400(b) requires the movant to indicate whether actual notice has been provided to all persons identified in the application under § 3007.201(b)(2). This proposed change will make it clear whether the expedited deadline for a response under proposed § 3007.400(c) applies.

If the motion states that actual notice has been provided to any person, the motion should identify the individual receiving actual notice, the date and approximate time, and the method of notification. This proposed identification requirement should help to protect the interests of the submitter and any person with a proprietary interest. Moreover, this proposed identification requirement should help to resolve motions seeking non-public materials that were submitted years ago—for instance, if there is a successor to the individual designated in the application.

If the motion states that actual notice has been provided to all identified persons, the motion should also state whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by such persons. This proposed change would facilitate expedited resolution of motions where it is represented that motion is uncontested (in whole or in part) and particularly when a person other than the submitter has a proprietary interest in the non-public materials. The Commission observes that in accordance with proposed § 3007.101(a), a motion for public disclosure can be avoided if all persons identified pursuant to § 3007.201(b)(2) consent to allowing the submitter to file the materials at issue publicly. The Commission observes that in accordance with proposed § 3007.101(a), a motion for public disclosure can be avoided if all persons identified pursuant to § 3007.201(b)(2) consent to allowing the submitter to file the materials at issue publicly.

Proposed § 3007.400(b) also adds instructions pertaining to the docket in which the motion must be filed. The motion must be filed in the docket in which the non-public materials sought were filed or are intended to be used, if such a docket (open or closed) exists. However, if no docket (open or closed) meeting either of those conditions exists, then the motion shall be filed in the G docket for the applicable fiscal year. Any movant considering filing in a G docket should telephone Dockets

personnel to discuss whether a more appropriate docket exists.

Proposed § 3007.400(c) imposes an expedited response deadline for motions if there has been actual notice. If there has been actual notice, proposed § 3007.400(c) sets the response period at 3 business days. In all other circumstances, the response period remains 7 calendar days, consistent with existing §§ 3007.40(b) and 3007.50(b). This proposed change should encourage movants to provide actual notice and thereby streamline motions practice.

Proposed § 3007.400(d) remains consistent with existing §§ 3007.40(c) and 3007.50(c) regarding reply.

Proposed § 3007.400(e) reflects that the Commission will continue to accord non-public treatment to the material while the motion is pending.

Proposed § 3007.400(f) sets forth information related to the Commission's ruling. Proposed § 3007.400(f) remains consistent with existing § 3007.31(d), which explains the timing for the Commission ruling. Proposed § 3007.400(f) adds that if there has been actual notice and the motion is uncontested, the Commission may rule before the response period expires. Proposed § 3007.400(f) remains consistent with existing § 3007.33, which explains the standards for the Commission ruling.

Proposed § 3007.401 Materials for which non-public treatment has expired. Proposed § 3007.401 applies to materials for which non-public treatment has expired. Consistent with existing § 3007.30, proposed § 3007.401(a) provides that non-public status shall expire after the passage of 10 years, unless otherwise provided by the Commission.[16]

The existing rules do not set forth the mechanism for the handling of materials when non-public treatment has expired. Proposed § 3007.401(b) through (f) provide the procedural mechanisms to take effect after 10 years have passed. Proposed § 3007.401(b) through (f) take into account the need for transparency, sound records management practices, and adequate protection of the commercial interests of affected persons, including the Postal Service.

Proposed § 3007.401(b) provides that any person may file a motion requesting the disclosure of materials for which non-public treatment has expired. Proposed § 3007.401(b) explains the content of such a motion. This motion must identify the materials requested and date(s) that materials were originally submitted under seal. Proposed § 3007.401(b) provides that the motion may not publicly disclose the information that is designated as non-public pending resolution of the motion. Proposed § 3007.401(b) informs the reader that all documents are treated in accordance with the Commission's record retention schedule, which may reduce the availability of some non-public information.

Proposed § 3007.401(b) requires the movant to indicate whether actual notice has been provided to all persons identified in the application under § 3007.201(b)(2). This proposed change will make it clear whether the expedited deadline for a response under proposed § 3007.401(c) applies.

If the motion states that actual notice has been provided to any person, the motion should identify the individual receiving actual notice, the date and approximate time, and the method of notification. This proposed identification requirement should help to protect the interests of the submitter and any person with a proprietary interest. Moreover, this proposed identification requirement should help to resolve motions seeking non-public materials that were submitted over 10 years ago and there is a successor to the individual designated in the application.

If the motion states that actual notice has been provided to any persons, the motion should also state whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by such persons. This proposed change would facilitate expedited resolution of motions where it is represented that motion is uncontested (in whole or in part) and particularly when a person other than the submitter has a proprietary interest in the non-public materials. The Commission observes that in accordance with proposed § 3007.101(a), a motion for public disclosure can be avoided if all persons identified pursuant to § 3007.201(b)(2) consent to allowing the submitter to file the materials at issue publicly.

Proposed § 3007.401(b) also adds instructions pertaining to the docket in which the motion must be filed. The motion must be filed in the docket in which the non-public materials sought were filed or are intended to be used, if such a docket (open or closed) exists. However, if no docket (open or closed) meeting either of those conditions exists, then the motion shall be filed in the G docket for the applicable fiscal year. Any movant considering filing in a G docket should telephone Dockets personnel to discuss whether a more appropriate docket exists.

Proposed § 3007.401(c) provides for the timing and content requirements pertaining to any response opposing the motion. Proposed § 3007.401(c) imposes the expedited response deadline for motions if there has been actual notice. If there has been actual notice, proposed § 3007.401(c) sets the response period at 3 business days. In all other circumstances, the response period remains 7 calendar days. This proposed change should encourage movants to provide actual notice and thereby streamline motions practice. A response opposing the motion must request an extension of non-public status by including an application for non-public treatment compliant with proposed § 3007.201 and include specific facts supporting any assertion that commercial injury exists 10 years after the original filing under seal.

Proposed § 3007.401(d) permits a reply to be filed within 7 calendar days of the response.

Proposed § 3007.401(e) states that the information designated as non-public will be accorded non-public treatment pending resolution of the motion.

Proposed § 3007.401(f) sets forth the timing and standard of the ruling. If there has been actual notice and the motion is uncontested, the Commission may rule before the response period expires. In all other circumstances, a motion may be granted any time after the response period described in proposed § 3007.401(c) expires. A motion may be denied any time after the reply period described in proposed § 3007.401(d) expires. The standard to balance the interests of the parties shall remain consistent with proposed § 3007.104.

V. Section-by-Section Analysis of the Proposed Changes to 39 CFR Part 3001

Proposed subpart E of part 3001. The Commission proposes to add subpart E to existing 39 CFR part 3001.

Existing §§ 3007.2 and 3007.3, which relate to information requests, are included in existing 39 CFR part 3007, which relates to non-public information. Information requests are not limited to situations involving non-public materials. Therefore, the Commission proposes to move the procedural requirements relating to information requests to the Commission's rules of practice and procedure under existing 39 CFR part 3001. To minimize disruption associated with moving these

[16] In many dockets, the Postal Service asks the Commission to protect certain non-public information from public disclosure indefinitely. *See, e.g.,* Docket Nos. MC2011–1 and CP2011–2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6–7. The Commission has consistently denied requests for indefinite protection. *See id.*

rules to existing 39 CFR part 3001, the Commission proposes to add proposed subpart E to 39 CFR part 3001. Proposed subpart E to 39 CFR part 3001 contains two rules applicable to information requests.

Proposed § 3001.100 Applicability and scope. The first sentence of proposed § 3001.100(a) mirrors the first sentence of existing § 3007.2, which informs the reader that the Commission may require that the Postal Service provide certain information that is likely to materially assist the Commission in fulfilling its statutory responsibilities. Consistent with existing § 3007.3(b), the second sentence of proposed § 3001.100(a) informs the reader that the Commission may request that persons other than the Postal Service provide certain information that is likely to materially assist the Commission in fulfilling its statutory responsibilities. Proposed § 3001.100(b) is based on the second sentence of existing § 3007.2 and includes a non-exhaustive list of the types of information that may be sought in an information request. Proposed § 3001.100(b) is intended to encompass information, documents, and things in whatever form that is likely to materially assist the Commission in fulfilling its statutory responsibilities.

Proposed § 3001.101 Information request. Proposed § 3001.101(a) combines existing § 3007.3(a) and (b). Proposed § 3001.101(a) provides that an information request may be directed to the Postal Service as well as other persons and describes the contents of an information request. Proposed § 3001.101(a) dispenses with the defined term ''authorized representative'' and instead specifies that an information request may be issued by the Commission, the Chairman of the Commission, or the presiding officer, consistent with existing practice and 39 U.S.C. 504(f)(2). Consistent with existing practice, proposed § 3001.101(a) provides that the issuance of an information request is discretionary.

Proposed § 3001.101(b) is based on existing § 3007.3(c). Proposed § 3001.101(b) provides that a request to issue an information request shall be via a motion listing the proposed questions and justifying the request. Proposed § 3001.101(b) codifies that the Commission, the Chairman of the Commission, or the presiding officer may issue an information request at any time after the motion. Any or all of the proposed questions may be included or modified in the information request.

VI. Section-by-Section Analysis of the Proposed Changes to 39 CFR part 3004

Proposed § 3004.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for according appropriate confidentiality. The Commission proposes to amend paragraph (d) of the existing rule to reflect that in all instances in which the Postal Service submits materials to the Commission that it reasonably believes to be exempt from public disclosure, the Postal Service shall follow the submission procedures appearing in subpart B of 39 CFR part 3007. The Commission also proposes to amend paragraph (e) of the existing rule to dispense with the use of the term ''third party'' to refer to a person other than the Postal Service.

Proposed § 3004.70 Submission of non-public materials by a person other than the Postal Service. The Commission also proposes to amend the heading identified in the existing rule to dispense with the use of the term ''third party'' to refer to a person other than the Postal Service. The Commission proposes to amend paragraph (a) of the existing rule to reflect that any other person providing materials to the Commission that it reasonably believes to be exempt from public disclosure shall follow the submission procedures appearing in subpart B of 39 CFR part 3007. The Commission also proposes to amend paragraph (b) of the existing rule to dispense with the use of the term ''third party'' to refer to a person other than the Postal Service. The Commission also proposes to amend paragraph (c) of the existing rule so as to update the cross-reference to the provision containing the requirements for an application for non-public treatment from existing § 3007.10 to proposed § 3007.201.

VII. Administrative Actions

The Commission establishes Docket No. RM2018–3 for consideration of matters raised by this Order. Additional information concerning this rulemaking may be accessed via the Commission's website at *http://www.prc.gov.* Interested persons may submit comments no later than March 23, 2018. Pursuant to 39 U.S.C. 505, James Waclawski is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

VIII. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2018–3 for consideration of the matters raised by this Order.

2. Interested persons may submit comments no later than March 23, 2018.

3. Pursuant to 39 U.S.C. 505, the Commission appoints James Waclawski to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

List of Subjects

39 CFR Part 3001

Administrative practice and procedure, Confidential business information, Freedom of information, Sunshine Act.

39 CFR Part 3004

Administrative practice and procedure, Freedom of information, Reporting and recordkeeping requirements.

39 CFR Part 3007

Administrative practice and procedure, Confidential business information.

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

■ 2. Add subpart E to read as follows:

Subpart E—Information Requests

Sec.
3001.100 Applicability and scope.
3001.101 Information request.

§ 3001.100 Applicability and scope.

(a) *Applicability.* The Commission may require the Postal Service to provide any information, documents, and things in its possession or control, or any information, documents, and things that it can obtain through reasonable effort and expense, that are likely to materially assist the Commission in its conduct of proceedings, in its preparation of reports, or in performance of its functions under title 39 of the U.S. Code. The Commission may request that any other person provide any information, documents, and things in its possession or control, or any

information, documents, and things that it can obtain through reasonable effort and expense, that are likely to materially assist the Commission in its conduct of proceedings, in its preparation of reports, or in performance of its functions under title 39 of the U.S. Code.

(b) *Scope.* Information, documents, and things include, but are not limited to, things such as explanations, confirmations, factual descriptions, data, and documents. Examples include writings; notes; graphs; charts; spreadsheets and underlying formulae; erased, fragmented, or damaged data; data compilations or tables; emails; drawings; photographs; and images—stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form.

§ 3001.101 Information request.

(a) An information request may be issued at the discretion of the Commission, the Chairman of the Commission, or the presiding officer seeking that the Postal Service or any other person provide information, data, or things covered by § 3001.100. An information request shall describe the documents, information, and things sought, briefly explain the reason for the request, and specify a date on which the response(s) shall be due.

(b) Any person may request the issuance of an information request by filing a motion. The motion shall list the information, data, or things sought; explain the reasons the Commission should make the information request, and justify why the information sought is relevant and material to the Commission's duties under title 39 of the U.S. Code. At any time after the motion is filed, the Commission, the Chairman of the Commission, or the presiding officer may issue an information request that includes all or some of the proposed questions or modifies the proposed questions.

PART 3004—PUBLIC RECORDS AND FREEDOM OF INFORMATION ACT

■ 3. The authority citation for part 3004 continues to read as follows:

Authority: 5 U.S.C. 552; 39 U.S.C. 503.

■ 4. Amend § 3004.30 by revising paragraph (d) introductory text and paragraph (e) to read as follows:

§ 3004.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for according appropriate confidentiality.

* * * * *

(d) *Requesting a Postal Service record.* The Commission maintains custody of records that are both Commission and Postal Service records. In all instances that the Postal Service submits materials to the Commission that the Postal Service reasonably believes to be exempt from public disclosure, the Postal Service shall follow the procedures described in subpart B of part 3007 of this chapter.

* * * * *

(e) *Requesting a record submitted under seal by a person other than the Postal Service.* The Commission maintains records of a confidential nature submitted by persons other than the Postal Service as non-public materials.

(1) A request made pursuant to FOIA for records designated as non-public by a person other than the Postal Service shall be considered in light of all applicable exemptions; and

(2) A request made pursuant to part 3007 of this chapter for records designated as non-public by a person other than the Postal Service shall be considered under the applicable standards set forth in that part.

■ 5. Amend § 3004.70, by revising the section heading and paragraphs (a), (b), and (c) to read as follows:

§ 3004.70 Submission of non-public materials by a person other than the Postal Service.

(a) *Overlap with treatment of non-public materials.* Any person who submits materials to the Commission (submitter) that the submitter reasonably believes to be exempt from public disclosure shall follow the procedures described in subpart B of part 3007 of this chapter.

(b) *Notice of request.* Except as provided in § 3004.30(d), if a FOIA request seeks materials designated as nonpublic materials, the Commission will provide the submitter with notice of the request. The Commission may also provide notice when it has reason to believe that materials submitted by a person other than the Postal Service are possibly exempt from disclosure and may fall within the scope of any FOIA request.

(c) *Objections to disclosure.* A submitter may file written objections to the request specifying all grounds for withholding the information under FOIA within 7 days of the date of the notice. If the submitter fails to respond to the notice, the submitter will be considered to have no objection, beyond those objections articulated in its application for nonpublic treatment pursuant to § 3007.201 of this chapter, to the disclosure of the information.

* * * * *

■ 7. Revise part 3007 to read as follows:

PART 3007—NON-PUBLIC MATERIALS PROVIDED TO THE COMMISSION

Subpart A—General Provisions

Sec.
3007.100 Applicability.
3007.101 Definitions.
3007.102 Treatment of non-public materials.
3007.103 Commission action to determine non-public treatment.
3007.104 Standard for public disclosure of non-public materials.

Subpart B—Submitting Non-public Materials and Seeking Non-public Treatment

3007.200 General requirements for submitting non-public materials and seeking non-public treatment.
3007.201 Application for non-public treatment.
3007.202 Redacted version of the non-public materials.
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Authority: 39 U.S.C. 503, 504.

Subpart A—General Provisions

§ 3007.100 Applicability.

The rules in this part implement provisions in 39 U.S.C. 504(g). These rules apply whenever:

(a) The Postal Service claims that any document or other matter it provides to the Commission under a subpoena issued under 39 U.S.C. 504(f), or otherwise at the request of the Commission in connection with any proceeding or other purpose under title

39 of the U.S. Code, contains non-public material;

(b) Any other person claims that any document or other matter provided to the Commission contains non-public material;

(c) The Commission is determining the appropriate degree of confidentiality to be accorded information identified by the Postal Service or any other person to contain non-public material in accordance with these rules; or

(d) The Commission is determining how to ensure appropriate confidentiality for non-public materials furnished to the Postal Service or any other person in accordance with these rules.

§ 3007.101 Definitions.

(a) *Non-public materials* means any information, documents, and things provided to the Commission that are claimed to be exempt from disclosure by the Postal Service pursuant to 39 U.S.C. 504(g), 3652(f) or 3654(f), or claimed to be protectable under Federal Rule of Civil Procedure 26(c) by any person other than the Postal Service with a proprietary interest in the materials. Non-public materials includes any information, documents, and things submitted to the Commission that are claimed to contain information that is described in 39 U.S.C. 410(c) or exempt from public disclosure under 5 U.S.C. 552(b). Non-public materials cease to be non-public if the status has expired or been terminated by the Commission pursuant to this part. Except as provided by § 3007.205, non-public materials cease to be non-public if the submitter publicly discloses the materials with the consent of each affected person with a propriety interest in the materials (if applicable).

(b) *Submitter* means any natural or legal person, including the Postal Service, that provides non-public materials to the Commission and seeks non-public treatment in accordance with the rules of this part.

§ 3007.102 Treatment of non-public materials.

(a) Except as described in part 3007 or part 3004 of this chapter, the Commission will not disclose or grant access to non-public materials.

(b) To accord appropriate confidentiality to non-public materials during any stage of a proceeding before the Commission, or in connection with any other purpose under title 39 of the U.S. Code, the Commission may, based on Federal Rule of Civil Procedure 26(c):

(1) Prohibit the public disclosure of the non-public materials;

(2) Specify terms for public disclosure of the non-public materials;

(3) Order a specific method for disclosing the non-public materials;

(4) Restrict the scope of the disclosure of the non-public materials as they relate to certain matters;

(5) Restrict who may access the non-public materials;

(6) Require that a trade secret be revealed only in a specific and limited manner or to limited or specified persons; and

(7) Order other relief as appropriate including sealing a deposition or part of a proceeding.

§ 3007.103 Commission action to determine non-public treatment.

Information requests as described in subpart E of part 3001 of this chapter, preliminary notices, or interim orders may be issued to help the Commission determine the non-public treatment, if any, to be given to the materials. Upon motion by any person, or on its own motion, the Commission may issue an order containing a description of and timeframe for the non-public treatment, if any, to be given to materials claimed by any person to be non-public. The Commission may amend the non-public treatment, if any, to be given to the materials at any time by order.

§ 3007.104 Standard for public disclosure of non-public materials.

(a) In determining whether to publicly disclose materials claimed by the Postal Service to be non-public, the Commission shall balance the nature and extent of the likely commercial injury identified by the Postal Service against the public interest in maintaining the financial transparency of a government entity competing in commercial markets.

(b) In determining whether to publicly disclose materials in which the Commission determines any person other than the Postal Service has a proprietary interest, the Commission shall balance the interests of the parties based on Federal Rule of Civil Procedure 26(c).

Subpart B—Submitting Non-public Materials and Seeking Non-public Treatment

§ 3007.200 General requirements for submitting non-public materials and seeking non-public treatment.

(a) Whenever providing non-public materials to the Commission, the submitter shall provide the following on the same business day: An application for non-public treatment that clearly identifies all non-public materials and describes the circumstances causing them to be submitted to the Commission in accordance with § 3007.201, a redacted (public) version of the non-public materials in accordance with § 3007.202, and an unredacted (sealed) version of the non-public materials in accordance with § 3007.203.

(b) Before submitting non-public materials to the Commission, if the submitter has reason to believe that any other person has a proprietary interest in the non-public materials, the submitter shall inform each affected person of the nature and scope of the submission to the Commission, including the pertinent docket designation(s) (if applicable) and that the affected person may address any confidentiality concerns directly with the Commission.

§ 3007.201 Application for non-public treatment.

(a) *Burden of persuasion.* An application for non-public treatment shall fulfill the burden of persuasion that the material designated as non-public should be withheld from the public.

(b) *Contents of application.* An application for non-public treatment shall include a specific and detailed statement setting forth the information specified in paragraphs (b)(1) through (8) of this section:

(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.

(2) A statement of whether the submitter, any other person, or both have a proprietary interest in the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.

(i) If the submitter has a proprietary interest in the materials, identification of an individual designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the materials.

(ii) If any person other than the submitter has a proprietary interest in the materials, identification of each person who is known to have a proprietary interest in the materials. If such an identification is sensitive or impracticable, an explanation shall be provided along with the identification of an individual designated by the

submitter to provide notice to each affected person.

(iii) If both the submitter and any other person have a proprietary interest in the non-public materials, identification in accordance with both paragraphs (b)(2)(i) and (ii) of this section shall be provided. The submitter may designate the same individual to fulfill the requirements of paragraphs (b)(2)(i) and (ii) of this section.

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the materials are non-public.

(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.

(5) At least one specific hypothetical, illustrative example of each alleged harm.

(6) The extent of the protection from public disclosure alleged to be necessary.

(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof.

(8) Any other relevant factors or reasons to support the application.

(c) *Incorporation by reference.* If the material designated as non-public has been previously claimed to be non-public material by a prior application for non-public treatment, the submitter may incorporate by reference the prior application. Any application that incorporates by reference a prior application that is accessible through the Commission's website (*http://www.prc.gov*) shall state the date, docket number, and the name of the filer of the prior application. In all other circumstances, the application that incorporates by reference a prior application shall attach the prior application.

§ 3007.202 Redacted version of the non-public materials.

(a) Except as allowed under paragraph (b) of this section, the submitter shall use the graphical redaction (blackout) method for all redacted materials. The submitter shall blackout only the material that is claimed to be non-public.

(b) The submitter shall justify using any other redaction method. The application for non-public treatment shall state with particularity the competitive harm or practical difficulty alleged to result from using the blackout method. The submitter shall specifically identify any alterations made to the unredacted version, including the location and number of lines or pages removed.

(c) If electronic, the redacted version shall be filed in a searchable format, unless the submitter certifies that doing so would be impracticable.

§ 3007.203 Unredacted version of the non-public materials.

(a) Each page, item, and thing, or portion thereof, of the unredacted version of the materials for which non-public treatment is sought shall be marked in a manner reasonably calculated to alert custodians to the confidential nature of the materials. The Filing Online method accessible through the Commission's website (*http://www.prc.gov*) described under §§ 3001.9 and 3001.10 of this chapter may not be used to submit the unredacted version of non-public materials.

(b) In lieu of §§ 3001.9 and 3001.10 of this chapter, the filing of the unredacted version of the non-public materials shall be made in accordance with the following requirements concerning the filing process, form, and number of copies.

(1) Except if using an alternative system approved by the Commission under paragraph (b)(2) of this section, the unredacted version of the non-public materials shall be filed in a sealed envelope clearly marked ''Confidential. Do Not Post on Web'' to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268–0001. Two copies of the unredacted version of the non-public materials shall be filed using an electronic format such as compact discs (CDs) or digital video discs (DVDs) that shall be clearly marked ''Confidential. Do Not Post on Web.'' The non-public materials may not be password protected. Spreadsheets shall display the formulas used and their links to related spreadsheets. All workpapers or data shall be filed in a form, and be accompanied by sufficient explanation and documentation, to allow them to be replicated using a publicly available PC application. If making an electronic unredacted version of the non-public materials is impracticable, two hard copies (paper) versions of the non-public materials may be filed.

(2) On behalf of the Commission, the Secretary has authority to approve the use of a secure alternative system to file non-public materials. The Secretary may set forth any minimum requirements associated with using an alternative system. If a filer using the alternative system fails to comply with any of the Secretary's requirements, the Secretary has discretion to revoke the filer's eligibility to use the alternative system or impose requirements specific to the filer as necessary to ensure secure transmission of non-public materials.

§ 3007.204 Protections for any other person with a proprietary interest.

Any other person with a proprietary interest in materials that have been or will be submitted to the Commission may address any confidentiality concerns directly with the Commission by seeking non-public treatment in accordance with the requirements of this subpart, responding to a motion for access to non-public materials in accordance with the requirements of subpart C of this part, or responding to a motion for disclosure of non-public materials in accordance with the requirements of subpart D of this part.

§ 3007.205 Non-public materials inadvertently filed publicly.

Any filer or person with a proprietary interest that discovers the inclusion of materials that could have been filed non-publicly within a public filing made in accordance with §§ 3001.9 and 3001.10 of this chapter shall telephone Dockets personnel immediately to request that the non-public material be removed from the publicly available material. Upon receipt of that telephone request, Dockets personnel will remove from the publicly available material that material for which non-public treatment is being requested until the end of the next business day in order to provide the filer or person with a proprietary interest an opportunity to file an application for non-public treatment and the non-public materials in accordance with the requirements of this subpart. If any filer makes repeated use of this rule, the Secretary has discretion to impose additional requirements on this filer as necessary to ensure secure filing of non-public materials.

Subpart C—Seeking Access to Non-public Materials

§ 3007.300 Eligibility for access to non-public materials.

(a) The following persons may access non-public materials without an order issued pursuant to § 3007.301(e):

(1) Members of the Commission;

(2) Commission employees, including Public Representatives, carrying out their official responsibilities;

(3) Contractors, attorneys, or other non-employee subject matter experts assisting the Commission in carrying out its duties;

(4) Reviewing courts and their staffs;

(5) Court reporters, stenographers, or persons operating audio or video recording equipment for such court reporters or stenographers at hearings or depositions.

(b) No person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using non-public materials shall be granted access to non-public materials. Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an individual or entity having a proprietary interest in the protected material.

(c) Any person not described in paragraph (a) or (b) of this section may request access to non-public materials as described in § 3007.301, for the purpose of aiding participation in a pending Commission proceeding (including compliance proceedings) or aiding the initiation of a proceeding before the Commission.

§ 3007.301 Motion for access to non-public materials.

(a) *Filing requirements.* A request for access to non-public materials shall be made by filing a motion with the Commission. Any part of the motion revealing non-public materials shall be filed in accordance with subpart B of this part. The motion shall be filed in the docket in which the materials were filed or in the docket in which the materials will be used; in all other circumstances, the motion shall be filed in the G docket for the applicable fiscal year.

(b) *Content requirements.* The motion shall:

(1) Identify the particular non-public documents to which the movant seeks access;

(2) Include a detailed statement justifying the request for access:

(i) if access is sought to aid participation in any pending Commission proceeding, the motion shall identify all proceedings (including compliance proceedings) in which the movant proposes to use the materials and how those materials are relevant to those proceedings, or

(ii) if access is sought to aid initiation of a proceeding before the Commission, the motion shall describe the subject of the proposed proceeding, how the materials sought are relevant to that proposed proceeding, and when the movant anticipates initiating the proposed proceeding;

(3) List all relevant affiliations, including employment or other relationship (including agent, consultant or contractor) with the movant, and whether the movant is affiliated with the delivery services, communications or mailing industries;

(4) Specify if actual notice of the motion has been provided to each person identified in the application pursuant to § 3007.201(b)(2). If the motion states that actual notice has been provided, the motion shall identify the individual(s) to whom actual notice was provided, the date(s) and approximate time(s) of actual notice, the method(s) of actual notice (by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages), and whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by the submitter or any other affected person;

(5) Attach a description of protective conditions completed and signed by the movant's attorney or non-attorney representative, who may use and modify the template Protective Conditions Statement in Appendix A to this subpart; and

(6) Attach a certification to comply with protective conditions executed by each person (and any individual working on behalf of that person) seeking access, who may use and modify the template Certification to Comply with Protective Conditions in Appendix A to this subpart.

(c) *Response.* If actual notice of the motion was provided in advance of the filing to each person identified pursuant to § 3007.201(b)(2) by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages, a response to the motion is due within 3 business days of the filing of the motion, unless the Commission otherwise provides. In all other circumstances, a response to the motion is due within 7 calendar days of filing the motion, unless the Commission otherwise provides.

(d) *Reply.* No reply to a response shall be filed, unless the Commission otherwise provides.

(e) *Commission ruling.* The Commission may enter an order at any time after receiving a motion if the movant states that: Actual notice has been given to each persons identified pursuant to § 3007.201(b)(2) and that the movant is authorized to represent that the motion is uncontested. In all other circumstances, the Commission will enter an order determining if access will be granted after the response period described in paragraph (c) of this section has expired. If no opposition to the motion has been filed by the submitter or any other person with a proprietary interest before the expiration of the response period described in paragraph (c) of this section, the Commission may issue an order granting access, subject to the agreed protective conditions. In determining whether to grant access to non-public materials, the Commission shall balance the balance the interests of the parties based on Federal Rule of Civil Procedure 26(c). If access is granted, access shall commence following the issuance of the appropriate order setting forth all protective conditions.

§ 3007.302 Non-dissemination, use, and care of non-public materials.

(a) No person who has been granted access to non-public materials in accordance with § 3007.300 or § 3007.301 may disseminate the materials in whole or in part to any person not allowed access pursuant to § 3007.300 or § 3007.301.

(b) Persons with access to non-public materials under § 3007.300 or § 3007.301 shall use non-public materials only for the purposes for which the non-public materials are supplied.

(c) Persons with access to non-public materials under § 3007.300 or § 3007.301 shall protect the non-public materials from any person not granted access under § 3007.300 or § 3007.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

§ 3007.303 Sanctions for violating protective conditions.

(a) If a person who has been granted access to non-public materials under § 3007.301 violates the terms of the order granting access, the Commission shall impose sanctions on the person who violated the order, the persons or entities on whose behalf the person was acting, or both. The sanctions may include:

(1) Dismissing the proceeding in whole or in part;

(2) Ruling by default against the person who violated the order or the persons or entities on whose behalf the person was acting; and

(3) Such other sanctions, as deemed appropriate by the Commission.

(b) This rule does not prevent any person, including the Postal Service, whose interests are damaged by the violation of an order granting access subject to protective conditions, from pursuing any remedies available under the law against the person who violated the order, the persons or entities on whose behalf the person was acting, or both.

§ 3007.304 Termination and amendment of access to non-public materials.

(a) *Termination of access.* (1) Except as provided in paragraph (b) of this section, access to non-public materials granted under § 3007.301 terminates either when the Commission issues the final order or report concluding the proceeding(s) in which the participant who filed the motion seeking access represented that the non-public materials would be used, or when the person granted access withdraws or is otherwise no longer involved in the proceeding(s), whichever occurs first. For purposes of this paragraph, an order or report is not considered final until after the possibility of judicial review expires.

(2) Upon termination of access, all non-public materials, and any duplicates, in the possession of each person (and any individual working on behalf of that person) granted access shall be destroyed or returned to the Commission. The participant who filed the motion seeking access shall file with the Commission a notice of termination of access and attach a certification of compliance with protective conditions executed by each person (and any individual working on behalf of that person) granted access to the non-public materials. The template Certification of Compliance with Protective Conditions and Termination of Access in Appendix A to this subpart may be used and modified to comply with this requirement.

(b) *Amendment of Access.* Any person may file a motion seeking to amend any protective conditions related to access of non-public materials, including extending the timeframe for which access is granted or expanding the persons to whom access is to be granted, in accordance with § 3007.301.

§ 3007.305 Producing non-public materials in non-Commission proceedings.

(a) If a court or other administrative agency issues a subpoena or orders production of non-public materials that a person obtained under protective conditions ordered by the Commission, the target of the subpoena or order shall, within 2 days of receipt of the subpoena or order, notify each person identified pursuant to § 3007.201(b)(2) of the pendency of the subpoena or order to allow time to object to that production or to seek a protective order or other relief.

(b) Any person that has obtained non-public materials under protective conditions ordered by the Commission and seeks to disclose the non-public materials in a court or other administrative proceeding shall make a good faith effort to obtain protective conditions at least as effective as those set forth in the Commission order establishing the protective conditions.

(c) Unless overridden by the reviewing court or other administrative agency, protective conditions ordered by the Commission will remain in effect.

Appendix A to Subpart C of Part 3007—Template Forms

Protective Conditions Statement

_____(name of submitter of non-public materials) requests confidential treatment of non-public materials identified as_____(non-confidential description of non-public materials) (hereinafter ''these materials'') in Commission Docket No(s).____(designation of docket(s) in which these materials were filed).

____(name of participant filing motion) (hereinafter ''the movant'') requests access to these materials related to____(designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter ''this matter'').

The movant has provided to each person seeking access to these materials:

○ this Protective Conditions Statement,

○ the Certification to Comply with Protective Conditions,

○ the Certification of Compliance with Protective Conditions and Termination of Access; and

○ the Commission's rules applicable to access to non-public materials filed in Commission proceedings (subpart C of part 3007 of the U.S. Code of Federal Regulations).

Each person (and any individual working on behalf of that person) seeking access to these materials has executed a Certification to Comply with Protective Conditions by signing in ink or by typing/s/before his or her name in the signature block. The movant attaches the Protective Conditions Statement and the executed Certification(s) to Comply with Protective Conditions to the motion for access filed with the Commission.

The movant and each person seeking access to these materials agree to comply with the following protective conditions:

1. In accordance with 39 CFR 3007.303, the Commission may impose sanctions on any person who violates these protective conditions, the persons or entities on whose behalf the person was acting, or both.

2. In accordance with 39 CFR 3007.300(b), no person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials shall be granted access to these materials. Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an individual or entity having a proprietary interest in the protected material.

3. In accordance with 39 CFR 3007.302(a), a person granted access to these materials may not disseminate these materials in whole or in part to any person not allowed access pursuant to 39 CFR 3007.300(a) (Commission and court personnel) or 3007.301 (other persons granted access by Commission order) except in compliance with:

a. Specific Commission order,

b. Subpart B of 39 CFR 3007 (procedure for filing these materials in Commission proceedings), or

c. 39 CFR 3007.305 (production of these materials in a court or other administrative proceeding).

4. In accordance with 39 CFR 3007.302(b) and (c), all persons granted access to these materials:

a. must use these materials only related to this matter; and

b. must protect these materials from any person not authorized to obtain access under 39 CFR 3007.300 or 3007.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

5. The duties of each person granted access to these materials apply to all:

a. Disclosures or duplications of these materials in writing, orally, electronically, or otherwise, by any means, format, or medium;

b. Excerpts from, parts of, or the entirety of these materials;

c. Written materials that quote or contain these materials; and

d. Revised, amended, or supplemental versions of these materials.

6. All copies of these materials will be clearly marked as ''Confidential'' and bear the name of the person granted access.

7. Immediately after access has terminated pursuant to 39 CFR 3007.304(a)(1), each person (and any individual working on behalf of that person) who has obtained a copy of these materials must execute the Certification of Compliance with Protective Conditions and Termination of Access. In compliance with 39 CFR 3007.304(a)(2), the movant will attach the executed Certification(s) of Compliance with Protective Conditions and Termination of Access to the notice of termination of access filed with the Commission.

8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.

Respectfully submitted,

(signature of representative)

/s/ _____

(print name of representative)
(address line 1 of representative)
(address line 2 of representative)
(telephone number of representative)
(email address of representative)
(choose the appropriate response)
Attorney/Non-Attorney Representative
for _____
(name of the movant)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3007.301(b)(5).

○ I have read and understand the Protective Conditions Statement and this Certification to Comply with Protective Conditions;

○ I am eligible to receive access to these materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials; and

○ I will comply with all protective conditions established by the Commission.

(signature of individual receiving access)

/s/ _____

(print name of individual receiving access)
(title of individual receiving access)
(employer of individual receiving access)
(name of the participant filing the motion)
(date)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3007.301(b)(6).

Certification of Compliance with Protective Conditions and Termination of Access

_____(name of submitter of non-public materials) requests confidential treatment of non-public materials identified as_____(non-confidential description of non-public materials) (hereinafter ''these materials'') filed in Commission Docket No(s).____(designation of docket(s) in which these materials were filed).

The Commission granted the request by_____(name of participant filing notice) to grant me access to these materials to use related to_____(designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter ''this matter'').

I certify that:

○ I accessed, maintained, and used these materials in accordance with the protective conditions established by the Commission;

○ Effective_____(date), my access to these materials was terminated; and

○ Effective_____(date), I no longer have any of these materials or any duplicates.

(signature of individual granted access)

/s/ _____

(print name of individual granted access)
(title of individual granted access)
(employer of individual granted access)
(name of participant filing notice)
(date)

You may delete the instructional text to complete this form. This form should be filed as an attachment to the notice of termination of access to non-public materials under 39 CFR 3007.304(a)(2).

Subpart D—Seeking Public Disclosure of Non-public Materials

§ 3007.400 Motion for disclosure of non-public materials.

(a) *Application of this rule.* This rule applies to non-public material during the initial duration of non-public status, up to 10 years, and any non-public material for which the Commission enters an order extending the duration of that status under § 3007.401(a).

(b) *Motion for disclosure of non-public materials.* Any person may file a motion with the Commission requesting that non-public materials be publicly disclosed. Any part of the motion revealing non-public materials shall be filed in accordance with subpart B of this part. The motion shall justify why the non-public materials should be made public and specifically address any pertinent rationale(s) provided in the application for non-public treatment. The motion shall specify whether actual notice of the motion has been provided to each person identified in the application pursuant to § 3007.201(b)(2). If the motion states that actual notice has been provided, the motion shall identify the individual(s) to whom actual notice was provided, the date(s) and approximate time(s) of actual notice, the method(s) of actual notice (by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages), and whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by the submitter or any other affected person. The motion shall be filed in the docket in which the materials were filed or in the docket in which the materials will be used; in all other circumstances, the motion shall be filed in the G docket for the applicable fiscal year.

(c) *Response.* If actual notice of the motion was provided in advance of the filing to each person identified pursuant to § 3007.201(b)(2) by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages, a response to the motion is due within 3 business days of the filing of the motion, unless the Commission otherwise provides. In all other circumstances, a response to the motion is due within 7 calendar days of filing the motion, unless the Commission otherwise provides.

(d) *Reply.* No reply to a response shall be filed, unless the Commission otherwise provides.

(e) *Non-public treatment pending resolution.* Pending the Commission's resolution of the motion, information designated as non-public will be accorded non-public treatment.

(f) *Commission ruling.* The Commission may enter an order at any time after receiving a motion if the movant states that: Actual notice has been given to each person identified pursuant to § 3007.201(b)(2) and that the movant is authorized to represent that the motion is uncontested. In all other circumstances, the Commission will enter an order determining what non-public treatment, if any, will be given to the materials after the response period described in paragraph (c) of this section has expired. The determination of the Commission shall balance the interests of the parties as described in § 3007.104.

§ 3007.401 Materials for which non-public treatment has expired.

(a) *Expiration of non-public treatment.* Ten years after the date of submission to the Commission, non-public materials shall lose non-public status unless otherwise provided by the Commission.

(b) *Motion for Disclosure of Materials for Which Non-Public Treatment has Expired.* Any person may file a motion requesting that materials for which non-public treatment has expired under paragraph (a) of this section be publicly disclosed. Any part of the motion revealing non-public materials shall be filed in accordance with subpart B of this part. The motion shall identify the materials requested and date(s) that materials were originally submitted under seal. The motion shall specify whether actual notice of the motion has been provided to each person identified in the application pursuant to § 3007.201(b)(2). If the motion states that actual notice has been provided, the motion shall identify the individual(s) to whom actual notice was provided, the date(s) and approximate time(s) of actual notice, the method(s) of actual notice (by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages), and whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by the submitter or any other affected person. The motion shall be filed in the docket in which the materials were filed or in the docket in which the materials will be used; in all other circumstances, the motion shall be filed in the G docket for the applicable

fiscal year. All documents are treated in accordance with the Commission's record retention schedule, which may reduce the availability of some non-public information.

(c) *Response.* If actual notice of the motion was provided in advance of the filing to each person identified pursuant to § 3007.201(b)(2) by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages, a response to the motion is due within 3 business days of the filing of the motion, unless the Commission otherwise provides. In all other circumstances, a response to the motion is due within 7 calendar days of the filing of the motion, unless the Commission otherwise provides. Any response opposing the motion shall request an extension of non-public status by including an application for non-public treatment compliant with § 3007.201. This extension application shall also include specific facts in support of any assertion that commercial injury exists despite the passage of 10 years pursuant to paragraph (a) of this section or the timeframe established by Commission order under § 3007.104.

(d) *Reply.* Within 7 calendar days of the filing of a response, any person (including the movant) may file a reply, unless the Commission otherwise provides.

(e) *Non-public treatment pending resolution.* Pending the resolution of the motion by the Commission, information designated as non-public will be accorded non-public treatment.

(f) *Ruling.* The Commission may grant the motion at any time after receiving a motion if the movant states that: actual notice has been given to each person identified pursuant to § 3007.201(b)(2) and that the movant is authorized to represent that the motion is uncontested. In all other circumstances, the Commission may grant the motion at any time after the response period described in paragraph (c) of this section has expired. The Commission may deny the motion and enter an order extending the duration of non-public status at any time after the reply period described in paragraph (d) of this section has expired. The determination of the Commission shall balance the interests of the parties as described in § 3007.104.

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