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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31123; Amdt. No. 3737]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 23, 2017. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 23, 2017.

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

For Examination

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

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

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

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

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

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and

contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on February 24, 2017.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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Jetmore, KS, Jetmore Muni, RNAV (GPS) RWY 17, Orig
Jetmore, KS, Jetmore Muni, RNAV (GPS) RWY 35, Orig
Jetmore, KS, Jetmore Muni, Takeoff Minimums and Obstacle DP, Orig
Grand Ledge, MI, Abrams Muni, VOR OR GPS–A, Amdt 5A, CANCELED
Lansing, MI, Capital Region Intl, VOR RWY 6, Amdt 25, CANCELED
Corinth, MS, Roscoe Turner, ILS OR LOC RWY 18, Amdt 3
Elizabeth City, NC, Elizabeth City CG Air Station/Rgnl, VOR/DME RWY 1, Amdt 12, CANCELED
Silver Springs, NV, Silver Springs, RNAV (GPS) RWY 24, Orig
Silver Springs, NV, Silver Springs, Takeoff Minimums and Obstacle DP, Orig
Dayton, OH, James M Cox Dayton Intl, Takeoff Minimums and Obstacle DP, Amdt 4
Aurora, OR, Aurora State, LOC RWY 17, Amdt 2
Aurora, OR, Aurora State, RNAV (GPS) RWY 17, Amdt 1
Aurora, OR, Aurora State, RNAV (GPS) RWY 35, Amdt 1
Aurora, OR, Aurora State, RNAV (GPS)-B, Orig-B, CANCELED
Aurora, OR, Aurora State, VOR/DME–A, Amdt 3B, CANCELED
Salem, OR, McNary Fld, ILS OR LOC Z RWY 31, Amdt 31
Salem, OR, McNary Fld, LOC BC RWY 13, Amdt 9

Salem, OR, McNary Fld, LOC Y RWY 31, Amdt 4
Salem, OR, McNary Fld, Takeoff Minimums and Obstacle DP, Amdt 9
Camden, TN, Benton County, VOR/DME RWY 4, Amdt 4A, CANCELED
Savannah, TN, Savannah-Hardin County, VOR/DME RWY 19, Amdt 5C, CANCELED
Selmer, TN, Robert Sibley, VOR/DME–A, ORIG, CANCELED
Pampa, TX, Perry Lefors Field, NDB RWY 17, Amdt 5A, CANCELED
South Hill, VA, Mecklenburg-Brunswick Rgnl, LOC RWY 1, Amdt 1
South Hill, VA, Mecklenburg-Brunswick Rgnl, RNAV (GPS) RWY 1, Amdt 1
South Hill, VA, Mecklenburg-Brunswick Rgnl, RNAV (GPS) RWY 19, Amdt 1
Kenosha, WI, Kenosha Rgnl, VOR RWY 25R, Amdt 1, CANCELED
Waupaca, WI, Waupaca Muni, NDB RWY 31, Orig, CANCELED
Waupaca, WI, Waupaca Muni, RNAV (GPS) RWY 10, Amdt 2
Waupaca, WI, Waupaca Muni, RNAV (GPS) RWY 28, Amdt 2

[FR Doc. 2017–04995 Filed 3–22–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31121; Amdt. No. 3735]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 23, 2017. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 23, 2017.

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

For Examination

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

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

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

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

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

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

SUPPLEMENTARY INFORMATION: This rule amends title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d),

good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on February 10, 2017.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 30 March 2017

Mountain View, AR, Mountain View Wilcox Memorial Field, Takeoff Minimums and Obstacle DP, Amdt 2
Brawley, CA, Brawley Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Atlanta, GA, Fulton County Airport-Brown Field, RNAV (RNP) Z RWY 8, Amdt 1B
Atlantic, IA, Atlantic Muni, RNAV (GPS) RWY 2, Amdt 1B
Atlantic, IA, Atlantic Muni, RNAV (GPS) RWY 20, Amdt 1B
Chicago, IL, Lansing Muni, LOC RWY 36, Orig-A
Chicago, IL, Lansing Muni, RNAV (GPS) RWY 9, Orig-A
Chicago, IL, Lansing Muni, RNAV (GPS) RWY 27, Orig-A
Chicago, IL, Lansing Muni, RNAV (GPS) RWY 36, Orig-A
Chicago, IL, Lansing Muni, VOR–A, Amdt 6A
Wellington, KS, Wellington Muni, NDB RWY 35, Orig, CANCELED
Hillsdale, MI, Hillsdale Muni, RNAV (GPS) RWY 10, Orig-B
Hillsdale, MI, Hillsdale Muni, RNAV (GPS) RWY 28, Orig-B
Hillsdale, MI, Hillsdale Muni, VOR–A, Amdt 8A
Jefferson, NC, Ashe County, LOC RWY 28, Amdt 3
Jefferson, NC, Ashe County, RNAV (GPS) RWY 28, Amdt 1
Newport, OR, Newport Muni, ILS OR LOC RWY 16, Amdt 2A
Newport, OR, Newport Muni, RNAV (GPS) RWY 16, Amdt 1A
Newport, OR, Newport Muni, RNAV (GPS) RWY 34, Amdt 1A
Newport, OR, Newport Muni, VOR RWY 16, Amdt 9A
Newport, OR, Newport Muni, VOR RWY 34, Amdt 2A
Newport, OR, Newport Muni, VOR–A, Amdt 5A
Roseburg, OR, Roseburg Rgnl, RNAV (GPS)-B, Orig-A
Indiana, PA, Indiana County/Jimmy Stewart Fld/, RNAV (GPS) RWY 11, Orig-A

Effective 27 April 2017

Chatom, AL, Roy Wilcox, RNAV (GPS) RWY 12, Orig-A
Chatom, AL, Roy Wilcox, RNAV (GPS) RWY 30, Orig-A
Guntersville, AL, Guntersville Muni—Joe Starnes Field, GPS–A, Orig, CANCELED
Guntersville, AL, Guntersville Muni—Joe Starnes Field, RNAV (GPS) RWY 7, Orig
Guntersville, AL, Guntersville Muni—Joe Starnes Field, RNAV (GPS) RWY 25, Orig
Guntersville, AL, Guntersville Muni—Joe Starnes Field, Takeoff Minimums and Obstacle DP, Amdt 2
Grand Canyon, AZ, Grand Canyon National Park, GRAND FOUR, Graphic DP
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 24L, Amdt 27
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 24L, Amdt 5
Bolingbrook, IL, Bolingbrook's Clow Intl, RNAV (GPS)-B, Amdt 1
Bolingbrook, IL, Bolingbrook's Clow Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Bolingbrook, IL, Bolingbrook's Clow Intl, VOR–A, Amdt 1
Auburn, IN, De Kalb County, ILS OR LOC RWY 27, Amdt 1D
Auburn, IN, De Kalb County, RNAV (GPS) RWY 9, Orig-E
Auburn, IN, De Kalb County, RNAV (GPS) RWY 27, Orig-D
Auburn, IN, De Kalb County, VOR–A, Amdt 10A
Fort Wayne, IN, Fort Wayne Intl, ILS OR LOC RWY 5, ILS RWY 5 (CAT II), Amdt 15B
Fort Wayne, IN, Fort Wayne Intl, ILS OR LOC RWY 32, Amdt 31
Fort Wayne, IN, Fort Wayne Intl, LOC BC RWY 14, Amdt 15C
Fort Wayne, IN, Fort Wayne Intl, RADAR–1, Amdt 26
Fort Wayne, IN, Fort Wayne Intl, RNAV (GPS) RWY 5, Amdt 1A
Fort Wayne, IN, Fort Wayne Intl, RNAV (GPS) RWY 14, Amdt 1A
Fort Wayne, IN, Fort Wayne Intl, RNAV (GPS) RWY 23, Amdt 2A
Fort Wayne, IN, Fort Wayne Intl, RNAV (GPS) RWY 32, Amdt 1A
Huntington, IN, Huntington Muni, NDB RWY 9, Amdt 2
Huntington, IN, Huntington Muni, RNAV (GPS) RWY 9, Orig-A
Huntington, IN, Huntington Muni, RNAV (GPS) RWY 27, Orig-A
Huntington, IN, Huntington Muni, VOR–A, Amdt 2
Kokomo, IN, Kokomo Muni, ILS OR LOC RWY 23, Amdt 10C
Kokomo, IN, Kokomo Muni, RNAV (GPS) RWY 23, Amdt 1C
Greenville, KY, Muhlenberg County, RNAV (GPS) RWY 24, Amdt 1C
Bangor, ME, Bangor Intl, Takeoff Minimums and Obstacle DP, Amdt 3
Las Vegas, NV, Mc Carran Intl, ILS OR LOC RWY 25L, Amdt 5B
Greenwood, SC, Greenwood County, RNAV (GPS) RWY 27, Orig-A
Crossville, TN, Crossville Memorial-Whitson Field, RNAV (GPS) RWY 26, Orig-A
Nashville, TN, Nashville Intl, ILS OR LOC RWY 2C, Amdt 2
Nashville, TN, Nashville Intl, ILS OR LOC RWY 2L, ILS RWY 2L (SA CAT I), ILS RWY 2L (CAT II), ILS RWY 2L (CAT III), Amdt 11
Nashville, TN, Nashville Intl, ILS OR LOC RWY 20R, Amdt 11
Nashville, TN, Nashville Intl, ILS OR LOC RWY 31, Amdt 10
Nashville, TN, Nashville Intl, RNAV (GPS) Y RWY 2C, Amdt 2
Nashville, TN, Nashville Intl, RNAV (GPS) Y RWY 2L, Amdt 3
Nashville, TN, Nashville Intl, RNAV (GPS) Y RWY 20R, Amdt 3
Nashville, TN, Nashville Intl, RNAV (GPS) Y RWY 31, Amdt 2
Petersburg, VA, Dinwiddie County, LOC RWY 5, Amdt 1
Petersburg, VA, Dinwiddie County, RNAV (GPS) RWY 5, Amdt 2
Petersburg, VA, Dinwiddie County, RNAV (GPS) RWY 23, Amdt 2
Petersburg, VA, Dinwiddie County, VOR RWY 23, Amdt 7
Park Falls, WI, Park Falls Muni, RNAV (GPS) RWY 36, Orig-C
Spencer, WV, Boggs Field, RNAV (GPS) RWY 28, Amdt 1B

[FR Doc. 2017–04997 Filed 3–22–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–344]

Schedules of Controlled Substances: Placement of FDA-Approved Products of Oral Solutions Containing Dronabinol [(-)-delta-9-trans-tetrahydrocannabinol (delta-9-THC)] in Schedule II

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Interim final rule, with request for comments.

SUMMARY: On July 1, 2016, the U.S. Food and Drug Administration (FDA) approved a new drug application for Syndros, a drug product consisting of dronabinol [(-)-delta-9-*trans*-tetrahydrocannabinol (delta-9-THC)] oral solution. Thereafter, the Department of Health and Human Services (HHS) provided the Drug Enforcement Administration (DEA) with a scheduling recommendation that would result in Syndros (and other oral solutions containing dronabinol) being placed in schedule II of the Controlled Substances Act (CSA). In accordance with the CSA, as revised by the Improving Regulatory Transparency for New Medical Therapies Act, DEA is hereby issuing an interim final rule placing FDA-approved products of oral solutions containing dronabinol in schedule II of the CSA.

DATES: The effective date of this rulemaking is March 23, 2017. Interested persons may file written comments on this rulemaking in accordance with 21 CFR 1308.43(g). Electronic comments must be submitted, and written comments must be postmarked, on or before April 24, 2017. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Interested persons, defined at 21 CFR 1300.01 as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811),'' may file a request for hearing or waiver of hearing pursuant to 21 CFR 1308.44. Requests for hearing and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before April 24, 2017.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–344'' on all correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the Web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, VA 22152.
- *Hearing requests:* All requests for hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attn: Acting Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–8953.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information, including the complete Department of Health and Human Services and Drug Enforcement Administration eight-factor analyses, to this interim final rule are available at *http://www.regulations.gov* for easy reference.

Request for Hearing, Notice of Appearance at Hearing, or Waiver of Participation in Hearing

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. In accordance with 21 CFR 1308.44(a) through (c), requests for a hearing, notices of appearance, and waivers of an opportunity for a hearing or to participate in a hearing may be submitted only by interested persons, defined as those ''adversely affected or aggrieved by any rule or proposed rule

issuable pursuant to section 201 of the Act (21 U.S.C. 811).'' 21 CFR 1300.01. Requests for a hearing and notices of participation must conform to the requirements of 21 CFR 1308.44(a) or (b), as applicable, and include a statement of the interest of the person in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any waiver of an opportunity for a hearing must conform to the requirements of 21 CFR 1308.44(c) including a written statement regarding the interested person's position on the matters of fact and law involved in any hearing.

Please note that pursuant to 21 U.S.C. 811(a), the purpose and subject matter of the hearing are restricted to ''(A) find[ing] that such drug or other substance has a potential for abuse, and (B) mak[ing] with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed * * *.'' Requests for a hearing and waivers of participation in the hearing should be submitted to DEA using the address information provided above.

Legal Authority

Under the Improving Regulatory Transparency for New Medical Therapies Act (Pub. L. 114–89), which was signed into law on November 25, 2015, DEA is required to commence an expedited scheduling action with respect to certain new drugs approved by the FDA. As provided in 21 U.S.C. 811(j), this expedited scheduling is required where both of the following conditions apply: (1) The Secretary of HHS has advised DEA that a New Drug Application (NDA) has been submitted for a drug that has a stimulant, depressant, or hallucinogenic effect on the central nervous system, and that it appears that such drug has an abuse potential and (2) the Secretary recommends that DEA control the drug in schedule II, III, IV, or V pursuant to 21 U.S.C. 811(a) and (b). In these circumstances, DEA is required to issue an interim final rule controlling the drug within 90 days.

The law further states that the 90-day timeframe starts the later of (1) the date DEA receives the HHS scientific and medical evaluation/scheduling recommendation or (2) the date DEA receives notice of the NDA approval by HHS. In addition, the law specifies that the rulemaking shall become immediately effective as an interim final rule without requiring the DEA to demonstrate good cause therefor. Thus, the purpose of subsection (j) is to speed the process by which DEA schedules newly approved drugs that are currently either in schedule I or not controlled (but which have sufficient abuse potential to warrant control) so that such drugs may be marketed without undue delay following FDA approval.[1]

Subsection (j) further provides that the interim final rule shall give interested persons the opportunity to comment and to request a hearing. After the conclusion of such proceedings, DEA must issue a final rule in accordance with the scheduling criteria of subsections 21 U.S.C. 811(b), (c), and (d) and 21 U.S.C. 812(b).

Background

Syndros is an oral solution that contains 5 mg of dronabinol (delta-9-THC) per mL of solution. Dronabinol is the generic name (International Nonproprietary Name, INN) for the (-) delta-9-trans isomer of tetrahydrocannabinol (THC), the primary psychoactive substance in marijuana. On June 1, 2015, Insys Therapeutics (Sponsor) submitted an NDA to the U.S. Food and Drug Administration (FDA) for Syndros, an oral formulation of dronabinol. The FDA accepted the NDA filing for Syndros on August 6, 2015 and approved the NDA on July 5, 2016. On December 28, 2016, the DEA received notification that HHS/FDA approved Syndros for the treatment of anorexia associated with weight loss in patients with Acquired Immune Deficiency Syndrome (AIDS), and for the treatment of nausea and vomiting resulting from cancer chemotherapy in patients who failed to respond to conventional anti-emetic therapies.

Determination To Schedule FDA-Approved Products Containing Dronabinol in an Oral Solution

On December 28, 2016, the HHS provided the DEA with a scientific and medical evaluation and scheduling recommendation related to dronabinol. Because DEA's authority to issue this interim final rule under subsection 811(j) is limited to drugs that are the subject of an approved NDA, and because the NDA was limited to an oral solution containing dronabinol, DEA's discussion here of the scheduling criteria is likewise limited to oral solutions containing dronabinol in FDA-approved drug products.[2] HHS's scientific and medical evaluation contained an eight-factor analysis of the abuse potential of FDA-approved products of oral solutions containing dronabinol and recommended that such products be placed in schedule II of the CSA.

In response, the DEA reviewed the scientific and medical evaluation and scheduling recommendation provided by the HHS, along with all other relevant data, and completed its own eight-factor review document pursuant to 21 U.S.C. 811(c). The DEA concluded that FDA-approved dronabinol oral solutions met the 21 U.S.C. 812(b)(2) criteria for placement in schedule II of the CSA.

Pursuant to subsection 811(j), and based on the HHS recommendation, NDA approval by HHS/FDA, and DEA's determination, DEA is issuing this interim final rule to schedule FDA-approved dronabinol oral solution as a schedule II controlled substance under the CSA.

Included below is a brief summary of each factor as analyzed by the HHS and the DEA, and as considered by the DEA in its scheduling action. Please note that both the DEA and HHS analyses are available in their entirety under ''Supporting Documents'' in the public docket for this interim final rule at *http://www.regulations.gov,* under Docket Number ''DEA–344.'' Full analysis of, and citations to, the information referenced in the summary may also be found in the supporting and related material.

1. *Its Actual or Relative Potential for Abuse:* Dronabinol is a generic name for the (-) delta-9-*trans* isomer of tetrahydrocannabinol (THC). THC is the primary psychoactive substance in marijuana. Dronabinol is the active pharmaceutical ingredient in Syndros. As stated by HHS, Marinol (synthetic dronabinol in sesame oil and encapsulated in a soft gelatin capsule) was approved by the FDA for medical use on May 31, 1985 and placed in schedule II based on its accepted medical use and high abuse potential. On July 2, 1999, Marinol was rescheduled from schedule II to schedule III because of the findings of the DEA that the difficulty of separating dronabinol from the sesame oil formulation and the delayed onset of behavioral effects due to oral route administration supported a lower abuse potential of Marinol as compared to substances in Schedule II. 64 FR 35928.

According to HHS, although Syndros oral solution and Marinol capsules have

[1] Given the parameters of subsection (j), in DEA's view, it would not apply to a reformulation of a drug containing a substance currently in schedules II through V for which an NDA has recently been approved.

[2] To the extent HHS's submissions to DEA are outside the scope of this interim final rule (*i.e.,* those addressing dronabinol beyond that contained in an FDA-approved oral solution), they will not be addressed in this document.

the same pharmacology, these formulations differ in their physical and chemical properties. Both these formulations have abuse potential as demonstrated by their effects on subjective scores of ''Drug Liking'' in human abuse potential studies. HHS indicated that the formulation of Syndros (oral solution) is easier to abuse than Marinol because this liquid formulation can be manipulated to produce concentrated extracts of dronabinol for abuse by inhalation (smoking or vaping) or through other routes of administration. Because of the large amount of dronabinol in Syndros oral solution it has a greater potential for extraction than Marinol and thus has a greater abuse potential. Based on the data from in vitro studies conducted by the Sponsor, the large amount of dronabinol in the Syndros formulation, its pharmacokinetics upon oral administration, and its contribution to marijuana psychoactivity, HHS stated that the abuse potential of the dronabinol oral solution is similar to that of other THC containing products such as concentrates, infused edibles and drinks. Similar to these THC containing products, Syndros oral solution can be easily manipulated to other forms that can be easily abused through inhalation and oral routes of administration.

The 2014 and 2015 Monitoring the Future (MTF) [3] survey indicated that THC containing products are being taken orally, smoked, and vaporized using devices such as e-cigarettes. There is a lack of evidence pertaining to diversion of Syndros or Marinol from legitimate drug channels. Syndros is not yet available on the market. Marinol and generic forms that reference it, have low levels of abuse and diversion according to the HHS and DEA, and this is attributed to the formulation of dronabinol in sesame oil.

2. *Scientific Evidence of Its Pharmacological Effects, if Known:* Dronabinol, also known as THC, is the primary psychoactive substance in marijuana and is also the active pharmaceutical ingredient in Syndros and Marinol. Dronabinol binds to and activates the cannabinoid receptors (CB1 and CB2). HHS states that CB1 receptors activation underlie the psychotropic effects and many other pharmacological effects of dronabinol. Some behavioral and other effects of dronabinol in humans consist of dizziness, nausea, tachycardia, euphoria, enhanced sensory perception, heightened imagination, impaired judgment, emotional lability, and increased appetite. Dronabinol has been reported to be self-administered intravenously by squirrel monkeys and intracerebroventricularly by rats. Discriminative stimulus effects of dronabinol are specific to CB1 cannabinoids, and unique because stimulants, hallucinogens, opioids, benzodiazepines, barbiturates, NMDA antagonists, and antipsychotics do not generalize to dronabinol.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* Dronabinol is the generic name for (-)delta-9-*trans*-tetrahydrocannabinol (THC) and is chemically known as (-)-(6a*R*-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[*b,d*]pyran-1-ol and has the chemical formula $C_{21}H_{30}O_2$. At room temperature (25 °C), dronabinol is a light-yellow oil and hardens upon refrigeration (4 °C) and is insoluble in water. The FDA-approved Syndros formulation consists of 5 mg dronabinol/mL of a 50 percent w/w alcoholic solution. Syndros will be marketed as 30 mL aliquots in clear, amber glass bottles and each bottle will contain 150 mg dronabinol.

In vitro manipulation studies with Syndros and Marinol (positive control) were conducted by the Sponsor. It was found that Syndros oral solution and Marinol capsules differ in their physiochemical properties. Specifically, Syndros, unlike Marinol, can be manipulated such that the dronabinol can be evaporated into residues that can be reconstituted for smoking or abused intravenously. According to HHS, Syndros contains a large amount of dronabinol (150 mg of dronabinol in 30 mL of solution) and would be an easily accessible source for abuse via the oral route.

4. *Its History and Current Pattern of Abuse:* There is a long history of abuse of THC in the United States. HHS noted that dronabinol in Marinol capsules is difficult to extract and therefore, cannot be used for smoking, vaping, or as an edible. The dronabinol in Syndros, however, is relatively easy to extract and concentrated forms can be used for smoking, vaping, or the sweetened alcoholic dronabinol in Syndros can be used as a substitute for THC in edibles. In the 2015 MTF survey, it was reported that teens were more likely to use e-cigarettes (vaping) than regular cigarettes (smoking). In this survey, 6.1 percent of 12th graders reported vaporizing marijuana or hash oil in their last e-cigarette. Additionally, in a recent analysis of marijuana users, 12 percent of users preferred vaping the drug over any other method and considered it a safer alternative to smoking. As a result, these data suggest that if dronabinol extracts or concentrates are available from dronabinol sources such as Syndros, a certain percent of the population are likely to vape these substances.

5. *The Scope, Duration, and Significance of Abuse:* As noted by HHS, information on the scope, duration, and significance of abuse of dronabinol was considered for both oral and inhalation routes. Data analyzed from the 2014 Summer Styles Survey, a national representative consumer panel survey of adult marijuana users aged 18 or older, showed that the majority of current marijuana users prefer smoking marijuana. In the same survey, it was reported that 16 percent of the current users consumed THC containing edibles or drinks. Individuals who preferred vaping (using a device to vaporize liquid THC) believed that vaping is ''healthier, better tasting'' and resulted in ''better effects'' associated with marijuana and THC.

6. *What, if any, Risk There is to the Public Health:* As stated by HHS, labeling on the Marinol packaging indicates that Central Nervous System (CNS) adverse reactions are dose-related and subject to patient variability. CNS adverse reactions are more likely to occur at higher doses of dronabinol. Following oral Marinol (dronabinol) doses of 0.4 mg/kg, CNS symptoms such as amnesia, confusion, delusions, depression, and hallucinations have been observed. According to HHS, it is assumed that Syndros oral solution will have similar adverse effects to Marinol. One concern with Syndros is that there is a large amount of dronabinol present in the product (150 mg dronabinol per bottle, 30 mL solution) that can easily be abused orally and may result in unintended overdoses.

Oral consumption of dronabinol, compared to inhaled THC, may result in psychoactive effects that are delayed and stronger with an increased risk of experiencing serious adverse events. When dronabinol (THC) is smoked, the drug rapidly reaches the brain and psychoactive effects are felt within minutes of inhalation, which allows the subject to control the dose more readily. Due to the absorption and metabolism by the liver following oral ingestion of dronabinol, it takes longer for an individual to feel the psychoactive effects. Therefore, the individual may underestimate the ingestion amount needed to feel the psychoactive effects

[3] MTF is a research program conducted at the University of Michigan's Institute for Social Research, under grants from NIDA. MTF tracks drug use trends among American adolescents in the 8th, 10th, and 12th grades and high school graduates into adulthood by conducting national surveys.

which may potentially result in an overdose.

7. *Its Psychic or Physiological Dependence Liability:* As stated in labeling for Marinol and Syndros, psychological and physical dependence has been observed in healthy individuals following use of dronabinol. Abrupt discontinuation of dronabinol in individuals receiving 210 mg/day (25 times the recommended daily dose for the treatment of anorexia associated with weight loss in AIDS patients) for 12 to 16 days resulted in undesirable symptoms including insomnia, irritability, and restlessness at 12 hours after discontinuation. These symptoms worsened to include hot flashes, anorexia, sweating, rhinorrhea, loose stools, and hiccoughs at 24 hours after discontinuation of dronabinol.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled under the CSA:* Dronabinol oral solution is not an immediate precursor of any controlled substance.

Conclusion: After considering the scientific and medical evaluation conducted by the HHS, the HHS' recommendation, and its own eight-factor analysis, the DEA has determined that these facts and all relevant data constitute substantial evidence of a potential for abuse of dronabinol oral solution. As such, the DEA hereby schedules FDA-approved products containing dronabinol oral solution as controlled substances under the CSA.

Determination of Appropriate Schedule

The CSA lists the findings required to place a drug or other substance in any particular Schedule (I, II, III, IV, or V). 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of the HHS and review of all available data, the Acting Administrator of the DEA, pursuant to 21 U.S.C. 812(b)(2), finds that:

1. FDA-approved products containing dronabinol in an oral solution have a high potential for abuse. The physicochemical properties of Syndros allow extraction of dronabinol for abuse through oral or inhalation (smoking or vaping) routes. Dronabinol is not easily extractable from Marinol. Oral abuse of dronabinol-containing products is associated with hallucinations, mood alterations, and paranoia. The 2015 MTF Survey reported that 6.1 percent of the 12th graders used e-cigarettes to vaporize marijuana or cannabinoid substances. Similarly, the 2014 Summer Styles Survey, 16 percent of current marijuana users indicated that they have consumed dronabinol containing edibles or drinks. These data collectively indicate FDA-approved oral solutions containing dronabinol have high potential for abuse.

2. FDA-approved products containing dronabinol in an oral solution have a currently accepted medical use in treatment in the United States. The FDA approved an oral solution containing dronabinol (Syndros) for the treatment of anorexia associated with weight loss in patients with AIDS, and for the treatment of nausea and vomiting associated with cancer chemotherapy in patients who have failed to respond adequately to conventional antiemetic treatments.

3. FDA-approved products containing dronabinol in an oral solution may lead to severe physical dependence. Following discontinuation of dronabinol at a dose 210 mg/day (25 times higher than the recommended daily dose for anorexia associated with weight loss in AIDS patients) for 12 to 16 consecutive days, withdrawal symptoms including irritability, insomnia, and restlessness were observed at 12 hours after discontinuation. These withdrawal symptoms worsened to include hot flashes, sweating, rhinorrhea, loose stools, hiccoughs, and anorexia at 24 hours after discontinuation of dronabinol. The withdrawal symptoms decreased gradually over the next 48 hours and patients reported having disturbed sleep for several weeks after discontinuation of dronabinol.

Based on these findings, the Acting Administrator of the DEA concludes that FDA-approved products containing dronabinol [(-)-delta-9-trans tetrahydrocannabinol (delta-9-THC)] in an oral solution warrant control in schedule II of the CSA. 21 U.S.C. 812(b)(2).

Requirements for Handling FDA-Approved Products Containing Dronabinol in an Oral Solution.

Preliminarily, it should be noted that any form of dronabinol other than in an FDA-approved drug product remains a schedule I controlled substance, and those who handle such material remain subject to the regulatory controls, and administrative, civil, and criminal sanctions, applicable to schedule I controlled substances set forth in the CSA and DEA regulations. However, for those who handle dronabinol oral solution exclusively in the form of an FDA-approved drug product, the following is a summary of the schedule II regulatory requirements that apply as a result of this interim final rule:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) FDA-approved products containing dronabinol in an oral solution, or who desires to handle such products, must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312. Any person who currently handles FDA-approved products containing dronabinol in an oral solution, and is not registered with the DEA, must submit an application for registration and may not continue to handle such products, unless the DEA has approved that application for registration, pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Quota.* Only registered manufacturers are permitted to manufacture FDA-approved products containing dronabinol in an oral solution in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

3. *Disposal of stocks.* Upon obtaining a schedule II registration to handle FDA-approved products containing dronabinol in an oral solution, any person who does not desire or is not able to maintain such registration must surrender all quantities of such products, or may transfer all quantities of such products to a person registered with the DEA in accordance with 21 CFR part 1317, in addition to all other applicable federal, state, local, and tribal laws.

4. *Security.* FDA-approved products containing dronabinol in an oral solution are subject to schedule II security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, and in accordance with 21 CFR 1301.71–1301.93.

5. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of FDA-approved products containing dronabinol in an oral solution must comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

6. *Inventory.* Every DEA registrant who possesses any quantity of FDA-approved products containing dronabinol in an oral solution must take an inventory of such products on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

Any person who becomes registered with the DEA to handle FDA-approved products containing dronabinol in an oral solution must take an initial inventory of all stocks of controlled

substances (including FDA-approved products containing dronabinol in an oral solution) on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including FDA-approved products containing dronabinol in an oral solution) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant must maintain records and submit reports for FDA-approved products containing dronabinol in an oral solution, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304, 1312, and 1317.

8. *Orders for FDA-approved products containing dronabinol* in an oral solution. Every DEA registrant who distributes FDA-approved products containing dronabinol in an oral solution is required to comply with order form requirements, pursuant to 21 U.S.C. 828, and in accordance with 21 CFR part 1305.

9. *Prescriptions.* All prescriptions for FDA-approved products containing dronabinol in an oral solution must comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR parts 1306 and 1311, subpart C.

10. *Manufacturing and Distributing.* In addition to the general requirements of the CSA and DEA regulations that are applicable to manufacturers and distributors of schedule II controlled substances, such registrants should be advised that (consistent with the foregoing considerations) any manufacturing or distribution of FDA-approved products containing dronabinol in an oral solution may only be for the legitimate purposes authorized by the FDCA and CSA.

11. *Importation and Exportation.* All importation and exportation of FDA-approved products containing dronabinol in an oral solution must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

12. *Liability.* Any activity involving FDA-approved products containing dronabinol in an oral solution not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Administrative Procedure Act

As explained above, under 21 U.S.C. 811(j), where a new drug is (1) approved by the Department of Health and Human Services (HHS) and (2) HHS recommends control in CSA schedule II–V, the DEA is required to issue an interim final rule scheduling the drug within 90 days. Additionally, the law specifies that the rulemaking shall become immediately effective as an interim final rule without requiring the DEA to demonstrate good cause. Therefore, the standard notice-and-comment requirements of section 553 of the APA, 5 U.S.C. 553, do not apply to this scheduling action.

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review

In accordance with 21 U.S.C. 811(j), this scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), ''[w]henever an agency is required by [5 U.S.C. 553], or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretive rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis.'' As noted in the above discussion regarding applicability of the Administrative Procedure Act, the notice-and-comment requirements of section 553 of the APA, 5 U.S.C. 553, do not apply to this scheduling action. Consequently, the RFA does not apply to this interim final rule.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* the DEA has determined that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA)). This rule will not result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on

competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign based companies in domestic and export markets. However, pursuant to the CRA, the DEA has submitted a copy of this interim final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

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

For the reasons set out above, the DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. In § 1308.12, add paragraph (f)(2) to read as follows:

§ 1308.12 Schedule II.

* * * * *

(f) * * *

(2) Dronabinol [(-)-delta-9-*trans* tetrahydrocannabinol] in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration	(7365)

* * * * *

Dated: March 20, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–05809 Filed 3–22–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0100]

Drawbridge Operation Regulation; Des Allemands Bayou, Des Allemands, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Burlington Northern Santa Fe Railroad swing span drawbridge across Des Allemands Bayou, mile 14.0, at Des Allemands, St. Charles and Lafourche Parishes, Louisiana. The deviation is necessary to install two open-deck spans for increased reliability of bridge operations. This deviation allows the bridge to remain in the closed-to-navigation position for two (2) separate, two-day periods.

DATES: This deviation is effective from 6 a.m. on April 20, 2017 through 12 noon on April 28, 2017.

ADDRESSES: The docket for this deviation, [USCG–2017–0100] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Giselle MacDonald, Bridge Management Specialist, Coast Guard; telephone 504–671–2128, email *Giselle.T.MacDonald@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Burlington Northern Santa Fe Railroad Company requested a temporary deviation from the operating schedule for the swing span drawbridge across Des Allemands Bayou, mile 14.0, at Des Allemands, St. Charles and Lafourche Parishes, Louisiana. The deviation was requested to install two open-deck spans, one on each side of the existing swing span, to increase the reliability of bridge opening and closing operations.

The draw currently operates under 33 CFR 117.440(b). The draw of the Burlington Northern Santa Fe Railroad Bridge, Mile 14.0, shall open on signal Monday through Friday from 7 a.m. to 3 p.m. At all other times the draw shall open on signal if at least 4 hours notice is given.

For purposes of this deviation, the bridge will remain closed to navigation for two separate dates, 30 hours each, from 6 a.m. April 20, 2017 through 12 noon, April 21, 2017 and from 6 a.m., April 27, 2017 through 12 noon, April 28, 2017. During this deviation, vessels will not be allowed to pass through the bridge. The bridge has a vertical clearance of 3 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass.

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

Dated: March 17, 2017.

Eric A. Washburn,

Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2017–05810 Filed 3–22–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AP73

Release of VA Records Relating to HIV

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its medical regulations governing the release of VA medical records. Specifically, VA is eliminating the restriction on sharing a negative test result for the human immunodeficiency virus (HIV) with veterans' outside providers. HIV testing is a common practice today in healthcare and the stigma of testing that may have been seen in the 1980s when HIV was first discovered is no longer prevalent. Continuing to protect negative HIV tests causes delays and an unnecessary burden on veterans when VA tries to share electronic medical information with the veterans' outside providers through electronic health information exchanges. For this same reason, VA will also eliminate restrictions on negative test results of sickle cell anemia. This final rule eliminates the current barriers to electronic medical information exchange.

DATES: This final rule is effective April 24, 2017.

FOR FURTHER INFORMATION CONTACT: Stephania H. Griffin, Director, Information Access and Privacy Office (10P2C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; (704) 245–2492. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on August 5, 2016, VA proposed to revise its regulations that govern the release of VA medical records, specifically eliminating the restriction on protecting a negative test result for HIV and sickle cell anemia. 81 FR 51836. VA provided a 60-day comment period, which ended on October 4, 2016. We received 5 comments on the proposed rule.

Section 7332 of 38 United States Code (U.S.C.) states that records of the identity, diagnosis, prognosis, or treatment of any patient or subject which are maintained in connection with the performance of any program or activity (including education, training, treatment, rehabilitation, or research) of any patient or subject relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia shall only be disclosed under certain circumstances. The intent of section 7332 is to protect the medical records of those veterans who are undergoing treatment or have a positive diagnosis for the conditions stated in this section. Due to the stigma that was associated with HIV and HIV testing at the time the regulation was first published, VA determined that the results of HIV testing should be protected regardless of the outcome of the test. Currently, HIV testing is considered part of routine health care under VA policy, similar to other types of diagnostic laboratory testing, and while oral informed consent is still required, no pre-testing counseling is required.

The continued protection of negative HIV tests has posed significant obstacles to the sharing of medical information between VA and non-VA medical providers, and also places an undue burden on veterans. If VA conducts an HIV test on a veteran, VA is prevented from electronically disclosing the veteran's medical information to the veteran's non-VA medical provider, even if the test result is negative, unless VA first obtains a specific written authorization that meets title 38 regulatory requirements from the veteran to share the medical information. Medical information sharing is crucial to treating a veteran who has outside medical providers and is significant in making certain that a veteran is not prescribed a medication that may negatively interact with other medications. Under section 7332, information about sickle cell anemia is also considered protected medical information. As with negative HIV test results, the prohibition on sharing negative test results for sickle cell anemia has posed challenges for the timely provision of medical care. This rulemaking eliminates the current restrictions on sharing with community providers negative test results of veterans for HIV and sickle cell anemia and is in line with the intent of the statute. As for positive HIV or sickle cell anemia test results, VA will continue to require a qualifying written authorization from the veteran prior to disclosure of such information.

We received five comments in support of the proposed rule. All commenters agreed that the electronic exchange of negative HIV and sickle cell anemia test results between medical providers is a critical to adequately address patient care. A commenter stated ''By removing the restriction on disclosure of negative test result for HIV, this proposed rule will play a significant role in ensuring that all veterans, including LGBT veterans, have access to efficient care, while also helping combat the stigma associated with HIV testing.'' We thank the commenters for their support of the rule.

Based on the rationale set forth in the Supplementary Information to the proposed rule and in this final rule, VA is adopting the proposed rule with no edits.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will impose no burden on small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking would be exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on March 16, 2017, for publication.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

For the reasons set out in the preamble, Department of Veterans Affairs is amending 38 CFR part 1 as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

■ 2. Amend § 1.460 by revising the last sentence of the definition of ''Infection with the human immunodeficiency virus (HIV)'' and the definitions of ''Patient'' and ''Treatment'' to read as follows:

§ 1.460 Definitions

* * * * *

Infection with the human immunodeficiency virus (HIV). * * * The term does not include negative results from the testing of an individual for the presence of the virus or antibodies to the virus, or such testing of an individual where the results are negative.

* * * * *

Patient. The term ''patient'' means any individual or subject who has been given a diagnosis or treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia and includes any individual who, after arrest on a criminal charge, is interviewed and/or tested in connection with drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in order to determine that individual's eligibility to participate in a treatment or rehabilitation program if the result of such testing is positive. The term ''patient'' includes an individual who has been diagnosed or treated for alcoholism, drug abuse, HIV infection, or sickle cell anemia for purposes of participation in a VA program or activity relating to those four conditions, including a program or activity consisting of treatment, rehabilitation, education, training, evaluation, or research. For the purpose of infection with the human immunodeficiency virus or sickle cell anemia, the term ''patient'' includes one tested positive for the disease even if no treatment is provided, offered, or requested. The term does not include a patient who has tested negative for the disease.

* * * * *

Treatment. The term ''treatment'' means the management and care of a patient for drug abuse, alcoholism or alcohol abuse, or the diagnosis, management and care of a patient for infection with the human immunodeficiency virus, or sickle cell anemia, or a condition which is identified as having been caused by one or more of these conditions, in order to reduce or eliminate the adverse effects upon the patient. The term does not include negative test results for the human immunodeficiency virus, antibodies to the virus, or sickle cell anemia, or such testing of an individual where the results are negative.

* * * * *

■ 3. Revising § 1.461(a)(1)(i) to read as follows.

§ 1.461 Applicability.

(a) * * *

(1) * * *

(i) Would identify a patient as an alcohol or drug abuser, an individual who tested positive for or is infected with the human immunodeficiency virus (HIV), hereafter referred to as HIV, or an individual who tested positive for or has sickle cell anemia, either directly, by reference to other publicly available information, or through verification of such an identification by another person; and

* * * * *

Dated: March 16, 2017.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2017–05799 Filed 3–22–17; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2013–0167; FRL–9958–60–Region 6]

Approval and Promulgation of Implementation Plans; Louisiana; Volatile Organic Compounds Rule Revision and Stage II Vapor Recovery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Under the Federal Clean Air Act (CAA or the Act) the Environmental Protection Agency (EPA) is approving the revisions submitted by the State of Louisiana controlling emissions of volatile organic compounds (VOCs) and changes to the Stage II gasoline vapor recovery rule as part of the Louisiana State Implementation Plan (SIP).

DATES: This rule is effective on May 22, 2017 without further notice, unless the EPA receives relevant adverse comment by April 24, 2017. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit comments, identified by Docket No. EPA–R06–

OAR–2013–0167, at *http://www.regulations.gov* or via email to *donaldson.tracie@epa.gov.* Follow the online instructions for submitting comments. Once submitted, the EPA may publish any comment received to its public docket. Comments cannot be edited or removed from *www.regulations.gov.* Do not submit electronically any information considered 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 will be considered the official comment with multimedia submissions and should include all discussion points desired. The EPA will generally not consider comments or their contents submitted outside of the primary submission (*i.e.* on the web, cloud, or other file sharing systems). For additional information on submitting comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, (214) 665–6633; *donaldson.tracie@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Tracie Donaldson or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''our,'' or ''us'' each mean ''the EPA.''

I. Background

A. CAA and SIPs

Section 110 of the CAA requires states to develop and submit to the EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards (NAAQS). The NAAQS currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA-approved SIP provisions and control strategies are federally enforceable. States revise the SIP as needed and submit revisions to the EPA for review and approval.

B. Why do we regulate VOCs?

Volatile Organic Compound is a term used to describe a class of chemicals that react in the atmosphere in the presence of sunlight to form ozone. Sources include vehicle exhaust, gasoline vapors, oil-based paints and industrial operations. A regulatory definition of Volatile Organic Compounds can be found at 40 CFR 51.100(s). The definition in Louisiana can be found in LAC 33:III, Chapter 1, section 111. Oxygen in the atmosphere reacts with VOCs and Oxides of Nitrogen to form ozone, a key component of urban smog. Inhaling even low levels of ozone can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It also can worsen bronchitis and asthma. Exposure to ozone can also reduce lung capacity in healthy adults.

C. Louisiana Submittals

On July 5, 2011, the EPA approved numerous revisions[1] to the Louisiana SIP, which spanned the years 1996 to 2006. The EPA is now approving two additional SIP revisions. First, on August 29, 2013, the State of Louisiana through the Louisiana Department of Environmental Quality (LDEQ) submitted the VOC Rule revisions, which incorporated revisions to the LAC during the years 2008 through 2010. These VOC revisions included changes to the Stage II vapor recovery rules. Second, on November 3, 2014, the State of Louisiana submitted the Permit Rule revisions that integrated revisions to the LAC during the years 2011 through 2013.

II. The EPA's Evaluation

As detailed in the Technical Support Document (TSD) accompanying this action, the LDEQ submitted SIP revisions to the VOC regulations found in LAC 33:III, chapters 1, 21, 22 and 25 which are addressed in this action.

The August 29, 2013 Volatile Organic Compounds Rule Revisions promulgated during 2008–2010. LAC 33:III chapters 1: Section 111, 21: Sections 2103, 2107, 2108, 2121, 2125, 2131, 2132, 2145, 2147, 22: Section 2201 and 25: Sections 2511, 2521, 2531 are addressed in this approval. The revision to section 523 was addressed previously (81 FR 51342).

The November 3, 2014 Permit Rule SIP Revisions were promulgated during 2011–2013. LAC 33:III chapter 21: Section 2132 is addressed in this approval. The submittal also included revisions to regulations in LAC 33:III chapters 2, 3, 5, and 6 but those revisions will not be acted upon here. The chapter 2 revisions were withdrawn in a chapter 2 ''repeal and replace'' submission dated February 23, 2016. Revisions to chapter 5, sections 525, 527 and 529 were withdrawn by Louisiana on July 14, 2016. Revisions to sections 317 and 319 will be addressed at a later date. The remaining sections have been addressed in a separate **Federal Register** document (81 FR 51341).

Please refer to Table 1 for a list of subchapters, divisions, and key sections proposed for revision in the Louisiana SIP by the LDEQ.

TABLE 1—REVISIONS FOR APPROVAL

Section	Title/subject	State adoption date
LAC Title 33. Environmental Quality Part III. Air		
Chapter 1 General Provisions		
111	Definitions	1/20/2008

[1] See 76 FR 38977

TABLE 1—REVISIONS FOR APPROVAL—Continued

Section	Title/subject	State adoption date
	Chapter 21 Control of Emission of Organic Compounds	
	Subchapter A. General	
2103	Storage of Volatile Organic Compounds	10/20/2010
2107	Volatile Organic Compounds—Loading	9/20/2008
2108	Marine Vapor Recovery	9/20/2008
2121	Fugitive Emission Control	1/20/2008
	Subchapter C Solvent Degreasers	
2125	Solvent Degreasers	1/20/2008
	Subchapter F Gasoline Handling	
2131	Filling of Gasoline Storage Vessels	7/20/2010
2132	Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities.	11/20/2008 & 4/20/2011
	Subchapter I Pharmaceutical Manufacturing Facilities	
2145	Pharmaceutical Manufacturing Facilities	1/20/2008
	Subchapter J Limiting Volatile Organic Compound (VOC) Emissions from Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry (SOCMI)	
2147	Limiting VOC Emissions from SOCMI Reactor Processes and Distillation Operations	1/20/2008
	Chapter 22 Control of Emissions of Nitrogen Oxides (NO_X)	
2201	Affected Facilities in the Baton Rouge Nonattainment Area and the Region of Influence	1/20/2008
	Chapter 25 Miscellaneous Incineration Rules	
2511	Standards of Performance for Biomedical Waste Incinerators	1/20/2008
2521	Refuse Incinerators	1/20/2008
2531	Standards of Performance for Crematories	1/20/2008

The revisions to sections 111, 2121, 2125, 2131, 2145, 2147 and 2201 are all limited to outline/numbering changes and wording corrections. These revisions are ministerial in nature and are approvable.

The revisions to sections 2107, 2108, 2511, 2521 and 2531 concern notifications to the department and due dates for reporting. These changes improve the enforceability of the regulations and are therefore, approvable.

Section 2132: Stage II Vapor Recovery

The revisions to section 2132 include numbering/outline and wording corrections as well as provide a Stage II vapor recovery exemption for facilities that exclusively fuel or refuel vehicles with onboard refueling vapor recovery (ORVR). The Louisiana SIP requires Stage II vapor recovery at gasoline dispensing facilities in Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge parishes. Background information on Stage II vapor recovery is provided in the TSD. The submitted revision would provide an exemption from Stage II vapor recovery requirements for facilities used *exclusively* for the initial fueling and/or refueling of vehicles equipped with onboard refueling vapor recovery (ORVR) equipment. The exact wording of the revision is: ''Exemption. Any segregated motor vehicle fuel dispensing system used exclusively for the fueling and/or refueling of vehicles equipped with onboard refueling vapor recovery equipment (*e.g.,* initial fueling of new vehicles at automobile assembly plants, refueling of rental cars at rental car facilities, and refueling of flexible fuel vehicles at E85 dispensing pumps), located at a facility subject to this regulation, is exempt from the requirements in Paragraphs B.5 and 6 of this Section.'' This submitted rule means that no facility fueling/refueling vehicles that are not 100% ORVR is covered by the rule. While LDEQ is not asking to remove Stage II requirements for these parishes it does revise the Stage II requirements for a certain portion of the fleet.

Under CAA section 110(l), Stage II vapor recovery programs cannot be revised or removed unless it is demonstrated that revision or removal of such program from the SIP would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement under the CAA. While Louisiana's submittal is not requesting the withdrawal of its Stage II rule for these parishes, this SIP revision is requesting revisions to Louisiana's Stage II requirements, and thus this revision must be shown to satisfy 110(l) of the CAA.

This SIP revision is approvable because all the vehicles whose initial fueling and refueling is being excluded from Stage II vapor recovery rules are equipped with ORVR, an equivalent vapor recovery system. In order for a system to constitute Stage II and ORVR, the systems must demonstrate a 95 percent or greater VOC control efficiency; thus, there will be no increase in emissions as a result of this SIP revision. During the phase-in of ORVR controls, which began in 1997, Stage II vapor recovery has provided VOC reductions in ozone nonattainment

areas and certain attainment areas of the OTR. Congress recognized that ORVR and Stage II would eventually become largely redundant technologies, and provided authority to the EPA to allow states to remove Stage II from their SIPs after EPA finds that ORVR is in widespread use.

Not only are there no increases in VOC emissions from this rule, but the parishes are in attainment of the 1-hour, 1997, and 2008 ozone standards. On March 26, 2009, EPA proposed a determination of attainment of the 1-hour ozone standard for the BR area comprised of the Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge parishes. A final determination was published in the **Federal Register** on February 10, 2010 (75 FR 6570). On June 25, 2010, EPA proposed a determination of attainment of the 1997 8-Hour Ozone standard for the BR area (75 FR 36316). A final determination was published in the **Federal Register** on September 9, 2010 (75 FR 54778). EPA proposed to redesignate the BR area to attainment on August 30, 2011 (76 FR 53852) and published approval of the redesignation to attainment of the 1997 8-hour ozone NAAQS on November 11, 2011 (76 FR 74000). On November 4, 2016, we proposed to redesignate the BR area to attainment for the 2008 8-hour ozone NAAQS (81 FR 76891) and we finalized the redesignation to attainment on December 27, 2016 (81 FR 95051). Under the 1990 CAA Amendments, Pointe Coupee Parish was included as part of the BR nonattainment area, and continued to be designated nonattainment for the 1-hour ozone NAAQS by operation of law. EPA approved Louisiana's request to remove Pointe Coupee from the BR area and redesignated Pointe Coupee Parish to attainment for the 1-hour ozone standard on January 6, 1997 (62 FR 648). Pointe Coupee Parish was designated as unclassifiable/attainment for the 1997 ozone standard on April 30, 2004, and designated as unclassifiable/attainment for the 2008 ozone standard on May 21, 2012 (77 FR 30088).

The rule does not increase VOC emissions, it does not apply to facilities fueling/refueling vehicles with less than 100% ORVR, and all the affected parishes are in attainment for the 1-hour, 1997, and 2008 ozone standards; therefore, we find that these revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement under the CAA.

This revision is consistent with our guidance memo dated December 12, 2006,[2] and EPA's action in other similar situations. *See* 71 FR 52464 (approving removal of Stage II vapor recovery systems at Ford's Chicago Assembly Plant); and 75 FR 74624 (approving exemption of facilities used exclusively to fuel/refuel ORVR equipped vehicles in Georgia); 78 FR 58884 (approving exemption of Enterprise rental car facility in Kentucky).

The ORVR systems are considered to be as efficient as Stage II vapor recovery equipment in reducing emissions from fueling and refueling. In relevant part, the Page Memorandum states that if a SIP revision demonstrates that 95 percent of the new vehicles fueled at an automobile assembly plant are equipped with ORVR, and that this level of ORVR use would not decrease, then EPA can determine that widespread use of ORVR has been achieved for the fleet of motor vehicles that are fueled at that facility. Page Memorandum, page 2. The CAA allows EPA to revise or waive the Section 182(b)(3) Stage II gasoline vapor recovery rules, after determining ORVR emissions control systems are in widespread use throughout the motor vehicle fleet. Louisiana revised its Stage II vapor recovery rule to exclude initial fueling and refueling of motor vehicles 100% equipped with ORVR.

Under Louisiana's changes, the only facilities excluded from Stage II vapor recovery rules are those which fuel/refuel 100% vehicles that are equipped with ORVR. Because only facilities that fuel/refuel 100% ORVR equipped vehicles are subject to Louisiana's rule changes, the criteria for widespread use for this fleet of vehicles is achieved. Furthermore, EPA made the determination on May 16, 2012 that there was widespread use throughout the country (77 FR 28772). A detailed discussion of this guidance and the 100(l) demonstration is provided in the TSD. A copy of this memo is included in the docket. This revision is approvable.

Section 2103: Storage of Volatile Organic Compounds

The submitted revisions to section 2103 provide an exemption from the ''submerged fill pipe'' provisions for a limited number of tanks at a specific facility. These tanks contain a highly corrosive material and the submerged fill pipe must be higher than 6 inches from the bottom of the tank for safety considerations. Please see our detailed evaluation and the RACT determination beginning on page 5 of the TSD. The filling of these tanks represents a very low volume of VOC emissions due to the presence of vapor loss control devices and will not have a significant effect or interfere with maintenance or attainment of any NAAQS.[3]

A complete summary is referenced in the Technical Support Document (TSD), ''Louisiana Administrative Code (LAC) Title 33 Environmental Quality Part III—Air,'' a copy of which is posted in the docket of this action.

III. Final Action

We are approving rule revisions to LAC 33:III for chapters 1, 21, 22 and 25 for the 2008–2010 VOC Rule revisions submittal and chapter 21 for the 2011–2013 Permit Rule revisions submittal into the Louisiana SIP as they appear in Table 1 above.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on May 22, 2017 without further notice unless we receive relevant adverse comment by April 24, 2017. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We are also making a ministerial correction to the table in 40 CFR 52.970(c) to reflect accurately the inclusion of sections 1101 and 1109 within Chapter 11, which addresses Control of Emissions from Smoke in the EPA-approved SIP on March 3, 1989 (54 FR 9795).

[2] ''Removal of Stage II Vapor Recovery in Situations Where Widespread Use of Onboard Refueling Vapor Recovery is Demonstrated,'' Memorandum from Stephen D. Page and Margo Tsirigotis Oge, December 12, 2006.

[3] On May 4, 2016, EPA published a final rule entitled ''Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas Classified as Marginal for the 2008 Ozone National Ambient Air Quality Standards'' where the Agency determined that the BRNA had attained the 2008 8-hour ozone NAAQS, by the applicable attainment date of July 20, 2015, based on 2012–2014 monitoring data. *See* 81 FR 26697.

IV. Incorporation by Reference

In this action, the EPA is including in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is incorporating by reference revisions to the Louisiana regulations as described above. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Samuel Coleman was designated the Acting Regional Administrator on January 20, 2017 through the order of succession outlined in Regional Order R6–1110.1, a copy of which is included in the docket for this action.

Dated: February 6, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart T—Louisiana

■ 2. In § 52.970(c), the table titled ''EPA Approved Regulations in the Louisiana SIP'' is amended by:

■ a. Removing the entries for Sections 701.C and 709.A. and the first entry for Section 711 under Chapter 7; the entries for Sections 919–919.A.6, 919.B.1, 919.B.2–919.B.5.g.v, 919.C, and 919.D.–F under Chapter 9; and Section 2103.A–2103.B, 2103.C–2103.D.4, 2103.D.4.a, 2103.D.4.b.–2103.D.4.d, 2103.G.1–2103.G.2, 2103.G.3–2103.G.5, 2103.H.2.a.–d, 2103.H.3, 2103.I.6, 2103.I.7, 2107.E.1.–2, 2108.A, 2108.C.2.–2108.C.3, 2108.D.4, 2108.E.1.a.i.–ii. and E.1.b, 2108.E.2, 2108.E.3. and E.5, 2108.F.1 under Chapter 21, Subchapter A.

■ b. Revising the entries for Sections 111, 701, 703, 705, 707, 709, 711, and 2121.A; the entries under Subchapters C, F, I, and J of Chapter 21; and the entries under Chapters 22 and 25;

■ c. Adding new entries in sequential order for Sections 1101, 1109, 2103, 2107, and 2108.

The revisions and additions read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State approval date	EPA approval date	Comments
*	*	*	*	*
Chapter 1—General Provisions				
*	*	*	*	*
Section 111	Definitions	1/20/2008	3/23/2017 [Insert **Federal Register** citation].	
*	*	*	*	*
Chapter 7—Ambient Air Quality				
Section 701	Purpose	03/20/08	01/28/16, 81 FR 4891	

EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP—Continued

State citation	Title/subject	State approval date	EPA approval date	Comments
Section 703	Scope	03/20/08	01/28/16, 81 FR 4891	
Section 705	Standards: Description of Ambient Air Quality Standards.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795.	Ref 52.999(c)(49).
Section 707	Degradation of Ambient Air Having Higher Quality than Set Forth in these Sections Restricted.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795.	Ref 52.999(c)(49).
Section 709	Measurement of Concentrations PM10, SO2, CO, Atmospheric Oxidants, NO_X, and Pb.	9/20/2006	7/05/2011, 76 FR 38977.	Ref 52.999(c)(50).
Section 711	Tables 1, 1a, and 2—Air Quality	9/20/2006	7/05/2011, 76 FR 38977.	$PM_{2.5}$ and PM_{10} standards.
*	*	*	*	*
Chapter 11—Control of Emissions From Smoke				
Section 1101	Control of Air Pollution from Smoke: Purpose and Control of Smoke.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795.	Ref 52.999(c)(49).
*	*	*	*	*
Section 1109	Control of Air Pollution from Outdoor Burning	Dec. 1987, LR13:741	03/08/89, 54 FR 09795.	Ref 52.999(c)(49).
*	*	*	*	*
Chapter 21—Control of Emissions of Organic Compounds				
*	*	*	*	*
Section 2103	Storage of Volatile Organic Compounds	10/20/2010	3/23/2017 [Insert **Federal Register** citation].	2103.E.3 is not included in the SIP.
*	*	*	*	*
Section 2107	Volatile Organic Compounds—Loading	9/20/2008	3/23/2017 [Insert **Federal Register** citation].	E.1.b., E.1.d. and E.1.e. have not been submitted for approval into the SIP.
Section 2108	Marine Vapor Recovery	9/20/2008	3/23/2017 [Insert **Federal Register** citation].	
*	*	*	*	*
Section 2121.A	Fugitive Emission Control	1/20/2008	3/23/2017 [Insert **Federal Register** citation].	
*	*	*	*	*
Subchapter C Solvent Degreasers				
Section 2125	Solvent Degreasers	1/20/2008	3/23/2017 [Insert **Federal Register** citation].	
*	*	*	*	*
Subchapter F Gasoline Handling				
Section 2131	Filling of Gasoline Storage Vessels	7/20/2010	3/23/2017 [Insert **Federal Register** citation].	
Section 2132	Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities.	4/20/2011	3/23/2017 [Insert **Federal Register** citation].	This rule is approved for fueling/refueling of only 100% ORVR vehicles.

EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP—Continued

State citation	Title/subject	State approval date	EPA approval date	Comments
*	*	*	*	*
Subchapter I Pharmaceutical Manufacturing Facilities				
Section 2145	Pharmaceutical Manufacturing Facilities	1/20/2008	3/23/2017 [Insert **Federal Register** citation].	
Subchapter J Limiting Volatile Organic Compound (VOC) Emissions from Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry (SOCMI)				
Section 2147	Limiting VOC Emissions from SOCMI Reactor Processes and Distillation Operations.	1/20/2008	3/23/2017 [Insert **Federal Register** citation].	
*	*	*	*	*
Chapter 22—Control of Emissions of Nitrogen Oxides (NO_X)				
Section 2201	Affected Facilities in the Baton Rouge Nonattainment Area and the Region of Influence.	1/20/2008	3/23/2017 [Insert **Federal Register** citation].	
Section 2202	Contingency Plan	1/20/2010	11/30/11, 76 FR 74000.	Section 2202 approved in the Louisiana Register January 20, 2010 (LR 36:63).
*	*	*	*	*
Chapter 25 Miscellaneous Incinerator Rules				
Section 2511	Standards of Performance for Biomedical Waste Incinerators.	1/20/2008	3/23/2017 [Insert **Federal Register** citation].	
Section 2521	Refuse Incinerators	1/20/2008	3/23/2017 [Insert **Federal Register** citation].	
Section 2531	Standards of Performance for Crematories	1/20/2008	3/23/2017 [Insert **Federal Register** citation].	
*	*	*	*	*

[FR Doc. 2017–04931 Filed 3–22–17; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–8471]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Patricia Suber, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW., Washington, DC 20472, (202) 646–4149.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of

1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region II				
New York:				
Butternut, Town of, Otsego County	361247	May 13, 1977, Emerg; October 21, 1983, Reg; March 21, 2017, Susp.	March 21, 2017	March 21, 2017
Decatur, Town of, Otsego County	361417	February 4, 1976, Emerg; June 18, 1987 Reg; March 21, 2017, Susp.	*.....do	Do.
Edmeston, Town of, Otsego County	361270	September 30, 1975, Emerg; June 1, 1987 Reg; March 21, 2017, Susp.	.....do	Do.
Exeter, Town of, Otsego County	361418	May 13, 1977, Emerg; November 18, 1983 Reg; March 21, 2017, Susp.	.....do	Do.
Hartwick, Town of, Otsego County	361271	May 13, 1977, Emerg; November 4, 1983 Reg; March 21, 2017, Susp.	.....do	Do.
Milford, Town of, Otsego County	361274	January 16, 1976, Emerg; May 19, 1987 Reg; March 21, 2017, Susp.	.....do	Do.
Oneonta, City of, Otsego County	360667	February 2, 1973, Emerg; September 29, 1978 Reg; March 21, 2017, Susp.	.....do	Do.
Otego, Town of, Otsego County	361284	September 19, 1977, Emerg; February 4, 1987 Reg; March 21, 2017, Susp.	.....do	Do.
Pittsfield, Town of, Otsego County	361277	May 13, 1977, Emerg; November 4, 1983 Reg; March 21, 2017, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Springfield, Town of, Otsego County	361280	May 5, 1976, Emerg; June 1, 1987 Reg; March 21, 2017, Susp.	.....do	Do.
Unadilla, Town of, Otsego County	361281	January 2, 1976, Emerg; September 30, 1987 Reg; March 21, 2017, Susp.	.....do	Do.
Worcester, Town of, Otsego County	361283	January 26, 1977, Emerg; June 1, 1988 Reg; March 21, 2017, Susp.	.....do	Do.
Region III				
Pennsylvania:				
Brokenstraw, Township of, Warren County.	422115	December 15, 1972, Emerg; July 17, 1978 Reg; March 21, 2017, Susp.	.....do	Do.
Buckingham, Township of, Bucks County.	420985	January 15, 1974, Emerg; March 15, 1979 Reg; March 21, 2017, Susp.	.....do	Do.
Centre, Township of Berks County	421056	October 4, 1977, Emerg; December 16, 1980 Reg; March 21, 2017, Susp.	.....do	Do.
Chalfont, Borough of, Bucks County	420184	February 25, 1972, Emerg; December 28, 1976 Reg; March 21, 2017, Susp.	.....do	Do.
Doylestown, Borough of, Bucks County	421410	February 17, 1977, Emerg; June 1, 1984 Reg; March 21, 2017, Susp.	.....do	Do.
Doylestown, Township of, Bucks County.	420185	December 22, 1972, Emerg; September 29, 1978 Reg; March 21, 2017, Susp.	.....do	Do.
Falls, Township of, Bucks County	420188	July 21, 1972, Emerg; September 30, 1980 Reg; March 21, 2017, Susp.	.....do	Do.
Farmington, Township of, Warren County.	422120	May 18, 1977, Emerg; May 15, 1985 Reg; March 21, 2017, Susp.	.....do	Do.
Freehold, Township of, Warren County	422121	May 3, 1979, Emerg; August 5, 1985 Reg; March 21, 2017, Susp.	.....do	Do.
Heidelberg, Township of, Berks County	421069	March 7, 1977, Emerg; May 3, 1990 Reg; March 21, 2017, Susp.	.....do	Do.
Limestone, Township of, Warren County.	422547	February 28, 1977, Emerg; June 1, 1987 Reg; March 21, 2017, Susp.	.....do	Do.
Lower Heidelberg, Township of, Berks County.	421077	July 18, 1975, Emerg; August 16, 1982 Reg; March 21, 2017, Susp.	.....do	Do.
Lower Southampton, Township of, Bucks County.	420192	September 15, 1972, Emerg; March 15, 1977 Reg; March 21, 2017, Susp.	.....do	Do.
Mead, Township of, Warren County	422123	October 3, 1975, Emerg; November 4, 1988 Reg; March 21, 2017, Susp.	.....do	Do.
Middletown, Township of, Bucks County	420193	October 6, 1972, Emerg; December 4, 1979 Reg; March 21, 2017, Susp.	.....do	Do.
New Britain, Borough of, Bucks County	420986	December 6, 1973, Emerg; April 2, 1979 Reg; March 21, 2017, Susp.	.....do	Do.
Newtown, Township of, Bucks County ..	421084	March 16, 1976, Emerg; December 18, 1979 Reg; March 21, 2017, Susp.	.....do	Do.
North Heidelberg, Township of, Berks County.	421086	December 23, 1976, Emerg; March 18, 1983 Reg; March 21, 2017, Susp.	.....do	Do.
Pittsfield, Township of, Warren County	422125	February 18, 1976, Emerg; August 1, 1987 Reg; March 21, 2017, Susp.	.....do	Do.
Sheffield, Township of, Warren County	422126	June 1, 1976, Emerg; December 1, 1986 Reg; March 21, 2017, Susp.	.....do	Do.
Triumph, Township of, Warren County	422550	October 19, 1979, Emerg; February 15, 1985 Reg; March 21, 2017, Susp.	.....do	Do.
Upper Bern, Township of, Berks County	421118	May 8, 1979, Emerg; November 5, 1982 Reg; March 21, 2017, Susp.	.....do	Do.
Upper Makefield, Township of, Bucks County.	420207	December 3, 1971, Emerg; October 17, 1978 Reg; March 21, 2017, Susp.	.....do	Do.
Watson, Township of, Warren County ..	422551	February 28, 1977, Emerg; May 1, 1985 Reg; March 21, 2017, Susp.	.....do	Do.
Region IV				
Mississippi:				
Benoit, Town of, Bolivar, Bolivar County	280013	April 1, 1975, Emerg; September 4, 1985, Reg; March 21, 2017, Susp.	.....do	Do.
Bolivar County, Unincorporated Areas.	280011	May 4, 1973, Emerg; July 17, 1989, Reg; March 21, 2017, Susp.	.....do	Do.
Cleveland, City of, Bolivar County	280016	May 18, 1973, Emerg; September 1, 1978, Reg; March 21, 2017, Susp.	.....do	Do.
Renova, Town of, Bolivar County	280065	July10, 2012, Emerg; N/A, Reg; March 21, 2017, Susp.	.....do	Do.
Shaw City of Bolivar County	280023	April 1, 1974, Emerg; June 3, 1986, Reg; March 21, 2017, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Shelby, City of, Bolivar County	280024	May 4, 1973; September 27, 1985; Reg; March 21, 2017, Susp.	.....do	Do.

*.....do, Do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: March 15, 2017.

Michael M. Grimm,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2017–05747 Filed 3–22–17; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 82, No. 55
Thursday, March 23, 2017

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Doc. No. AMS–SC–16–0005]

U.S. Standards for Grades of Shelled Walnuts and Walnuts in the Shell

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening of comment period.

SUMMARY: Notice is hereby given that Agricultural Marketing Service (AMS) is reopening the comment period on the proposed rule that invited comments on the revision of the U.S. Standards for Grades of Shelled Walnuts and U.S. Standards for Grades of Walnuts in the Shell published in the **Federal Register** on November 25, 2016. The comment period for this proposed rule closed on January 24, 2017. The changes are intended to modernize the standards, and meet consumer demands by providing greater marketing flexibility.

DATES: Comments on the proposed rule published in the **Federal Register** on November 25, 2016 (81 FR 85164) must be received by April 24, 2017.

ADDRESSES: Interested persons are invited to submit comments on the proposed rule via the Internet at: *http://www.regulations.gov*. Comments may also be submitted to Standardization Branch, Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, Training and Development Center, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406; or via fax (540) 361–1199. All comments should reference the document number and the dates and page numbers of this issue, and the November 25, 2016, issue of the **Federal Register**. All comments received will be posted online without change, including any personal information provided, and will be made available for public inspection at the above physical address during regular business hours.

FOR FURTHER INFORMATION CONTACT: David G. Horner at the address above, telephone: (540) 361–1120, fax: (540) 361–1199, or email: *Dave.Horner@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** on November 25, 2016 (81 FR 85164) that would revise the grade standards to permit certification of red colored walnuts. Such a change would facilitate the marketing of increasingly popular red varieties of walnuts in both domestic and export markets.

The 60-day comment period provided in the proposed rule closed January 24, 2017. The comment period for the proposed rule is reopened until April 24, 2017. AMS is reopening the public comment period for 30 days to ensure that interested persons have sufficient time to review and comment on the proposed rule.

Authority: 7 U.S.C. 601–674.

Dated: March 7, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–04805 Filed 3–22–17; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0130; Directorate Identifier 2016–NM–058–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Dassault Aviation Model MYSTERE–FALCON 50 airplanes and FALCON 2000 airplanes. This proposed AD was prompted by a report indicating that during ground maintenance, a Model FALCON 2000 airplane experienced a loss of hydraulic pressure affecting both hydraulic systems due to damage to both brake hoses on the main landing gear (MLG). This proposed AD would require an inspection for certain brake hoses, installation of protective wraps or installation of certain brake hoses, and replacement of certain brake hoses. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by May 8, 2017.

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 Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone: 201–440–6700; Internet: *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0130; 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA

98057–3356; telephone: 425–227–1137; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0130; Directorate Identifier 2016–NM–058–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2013–0255, dated October 23, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model MYSTERE–FALCON 50 airplanes and FALCON 2000 airplanes. The MCAI states:

> During ground maintenance, a Falcon 2000 aeroplane experienced a loss of hydraulic pressure, affecting both hydraulic systems.
>
> The investigation results revealed that this event was due to damage to both brake hoses on the same main landing gear (MLG), which chafed against the torque link assembly during MLG extension/retraction cycle. The Part Numbers (P/N) of the affected brake hoses are P/N AE705317–1 and P/N 00–200–1268, which are made of a braided stainless steel sleeve.
>
> This condition, if not detected and corrected, could lead to loss of braking during landing or a rejected take-off, possibly resulting in a runway excursion. In addition, there is a risk of fire if the leaking brake hydraulic fluid reaches hot parts.
>
> For the reasons described above, this [EASA] AD requires a one-time inspection of the brake hoses to identify the P/N and determine the presence of protection against chafing and, depending on findings, installation of protective wraps or replacement of the brake hoses with serviceable parts that have a Dacron sleeve protection.

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–2017–0130.

Related Service Information Under 1 CFR Part 51

Dassault has issued the following service information:

- Dassault Service Bulletin F50–510, Revision 2, dated December 20, 2012; and Dassault Service Bulletin F2000–382, Revision 2, dated May 12, 2011. This service information describes procedures for an inspection of the brake hoses to identify whether brake hoses having certain part numbers are installed, and installation of protective wraps on the brake hoses or installation of certain brake hoses that are fitted with Dacron sleeves. These documents are distinct since they apply to different airplane models.
- Dassault Service Bulletin F50–518, dated April 14, 2011; and Dassault Service Bulletin F2000–368, dated May 29, 2009. This service information describes replacement of certain brake hoses. 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.

Costs of Compliance

We estimate that this proposed AD affects 302 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	1 work-hour × $85 per hour = $85	$0	$85	$25,670

We estimate the following costs to do any necessary installations and replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that might need these installations and replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Installation of brake hose	1 work-hour × $85 per hour = $85	$340	$425
Installation of protective wraps	1 work-hour × $85 per hour = $85	340	425
Replacement	1 work-hour × $85 per hour = $85	340	425

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2017–0130; Directorate Identifier 2016–NM–058–AD.

(a) Comments Due Date

We must receive comments by May 8, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model MYSTERE–FALCON 50 airplanes and FALCON 2000 airplanes, certificated in any category, all serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by a report indicating that during ground maintenance, a Model FALCON 2000 airplane experienced a loss of hydraulic pressure affecting both hydraulic systems due to damage to both brake hoses on the main landing gear (MLG). We are issuing this AD to detect and correct unprotected brake hoses, which could lead to loss of braking during landing or a rejected take-off, and result in a runway excursion and a risk of fire if the leaking brake hydraulic fluid reaches hot parts.

(f) Compliance

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

(g) Inspection

Within 9 months after the effective date of this AD, inspect the brake hoses to identify whether any brake hose having part number (P/N) AE705317–1 or P/N 00–200–1268 is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the brake hose can be conclusively determined from that review.

(h) Installation

If, during the inspection required by paragraph (g) of this AD, it is determined that any brake hose having P/N AE705317–1 or P/N 00–200–1268 is installed, do the actions specified in paragraph (h)(1) or (h)(2) of this AD.

(1) Install protective wraps on the brake hoses, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F50–510, Revision 2, dated December 20, 2012; or Dassault Service Bulletin F2000–382, Revision 2, dated May 12, 2011; as applicable.

(2) Install brake hoses having P/N 00–200–1534 that are fitted with Dacron sleeves, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F50–518, dated April 14, 2011; or Dassault Service Bulletin F2000–368, dated May 29, 2009; as applicable.

(i) Replacement

Within 6,000 flight cycles, or within 149 months, whichever occurs first after the effective date of this AD: Replace brake hoses having P/N AE705317–1 and P/N 00–200–1268 with brake hoses having P/N 00–200–1534 that are fitted with Dacron sleeves, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F50–518, dated April 14, 2011; or Dassault Service Bulletin F2000–368, dated May 29, 2009; as applicable. Once brake hoses having P/N 00–200–1534 are fitted in an MLG leg, no further action is required for that MLG leg, as specified in paragraph (j) of this AD.

(j) Provisions for Unaffected MLG Leg Assemblies

If, during the inspection required by paragraph (g) of this AD, it is determined that the airplane is equipped with an MLG leg assembly with a part number specified in table 1 to paragraph (j) of this AD, the requirement of paragraph (h) of this AD is not applicable, provided that the MLG leg assembly has not been modified in service after its installation on an airplane.

TABLE 1 TO PARAGRAPH (j) OF THIS AD—MLG LEG ASSEMBLY NOT AFFECTED

Model	MLG leg position	Part No.
MYSTERE-FALCON 50 airplanes	Left Hand (LH)	C23791–1009 amdt F.
MYSTERE-FALCON 50 airplanes	Right Hand (RH)	C23792–1009 amdt F.
FALCON 2000	LH	D23345000–7 amdt B.
FALCON 2000	RH	D23346000–7 amdt B.

Note 1 to paragraph (j) of this AD: The parts specified in table 1 to paragraph (j) of this AD are known to be delivered with brake hoses having P/N 00–200–1534 that are fitted with Dacron sleeves.

(k) Parts Installation Limitation

As of the effective date of this AD, no person may install a brake hose having P/N AE705317–1 or P/N 00–200–1268 on any airplane, unless the brake hose has been inspected to verify that protective wraps are installed on the hose, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F50–510, Revision 2, dated December 20, 2012; or Dassault Service Bulletin F2000–382, Revision 2, dated May 12, 2011; as applicable.

(l) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, a brake hose having P/N AE705317–1 or P/N 00–200–1268, or an MLG leg or shock absorber equipped with a brake hose having P/N AE705317–1 or P/N 00–200–1268, after the actions in paragraphs (h)(2) or (i) of this AD are done.

(m) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (h)(1) and (k) of this AD, if those actions were performed before the effective date of this AD using Dassault Service Bulletin F50–510, Revision 1, dated December 15, 2010; or Dassault Service Bulletin F2000–382, Revision 1, dated December 15, 2010.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1137; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2013–0255, dated October 23, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0130.

(2) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone: 201–440–6700; Internet: *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 8, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–05235 Filed 3–22–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0131; Directorate Identifier 2016–NM–186–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–300, –400, and –500 series airplanes. This proposed AD was prompted by a report of fatigue cracking found in a certain fuselage frame common to the water tank support intercostal clip located between certain stringers. This proposed AD would require inspections for any cracking of a certain fuselage frame, and repair if necessary. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by May 8, 2017.

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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0131.

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–2017–0131; 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 Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Galib Abumeri, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5324; fax: 562–627–5210; email: *galib.abumeri@faa.gov.*

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–2017–0131; Directorate Identifier 2016–NM–186–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 because of those comments.

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

Discussion

We have received a report of fatigue cracking found in a certain fuselage frame, Station (STA) 947.5 on the right side, common to the water tank support intercostal clip located between certain stringers, S–24R and S–25R. Ten cracks were reported on airplanes having line

numbers 2566 through 3132. Those airplanes had accumulated between 39,400 and 51,745 total flight cycles. The reported cracks were between 0.184 and 1.125 inch long. These cracks were found to be caused by fatigue caused by cyclic loading of the fuselage, and out-of-plane bending of the frame caused by the water tank loads. Fatigue cracking, if not corrected, could grow in size and result in a severed frame. Multiple adjacent severed frames would result in reduced structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–53A1357, dated August 9, 2016. The service information describes procedures for inspections for any cracking of a certain fuselage frame, and repair if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0131.

Costs of Compliance

We estimate that this proposed AD affects 140 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	2 work-hours × $85 per hour = $170 per inspection cycle.	$0	$170 per inspection cycle.	$23,800 per inspection cycle.

We estimate the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need this repair:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	18 work-hour × $85 per hour = $1,530	$100	$1,630

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2017–0131; Directorate Identifier 2016–NM–186–AD.

(a) Comments Due Date

We must receive comments by May 8, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1357, dated August 9, 2016.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of fatigue cracking found in a certain fuselage frame common to the water tank support intercostal clip located between certain stringers. We are issuing this AD to detect and correct cracking, which could grow in size and result in a severed frame. Multiple adjacent severed frames would result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Inspection

Before the accumulation of 34,000 total flight cycles or within 6,000 flight cycles after the effective date of this AD, whichever occurs later, do a high frequency eddy current (HFEC) inspection for any cracking in the fuselage frame at station (STA) 947.5 common to the water tank support intercostal clip located between stringer S–24R and S–25R, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1357, dated August 9, 2016.

(1) If no cracking is found, repeat the inspection thereafter at intervals not to exceed 12,000 flight cycles.

(2) If any cracking is found: Before further flight, repair in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1357, dated August 9, 2016.

(h) Terminating Action

Accomplishing the repair in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1357, dated August 9, 2016, terminates the inspection requirements of paragraph (g) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled 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 RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

(1) For more information about this AD, contact Galib Abumeri, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5324; fax: 562–627–5210; email: *galib.abumeri@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 14, 2017.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–05519 Filed 3–22–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9387; Directorate Identifier 2016–NM–182–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model BD–100–1A10 airplanes. This proposed AD was prompted by a report that the equipment racks were not designed to support the weight of all the equipment and the secondary direct current power centers. This proposed AD would require modifying the equipment racks. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by May 8, 2017.

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 Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9387; 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: Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY

11590; telephone: 516–228–7329; fax: 516–794–5531.

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–2016–9387; Directorate Identifier 2016–NM–182–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2016–26, dated September 14, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model BD–100–1A10 airplanes. The MCAI states:

> During a recent design review, a Bombardier equipment supplier discovered that the weight of the Secondary Direct Current (DC) Power Center was incorrectly reported to the structural partner(s) via their equipment interface drawing. Consequently, the left-hand side (LHS) and right-hand side (RHS) equipment racks were not designed to support the actual weight of all the equipment and the Secondary DC Power Centers under all loading conditions. In the event of a high energy emergency landing or runway excursion, the structural failure of the LHS or RHS equipment racks may result in the blockage of the emergency escape route for the pilot(s) and crew if this condition is not corrected.

Required actions include modifying the equipment racks. 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–2016–9387.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Service Bulletin 100–25–39, dated October 26, 2015; and Bombardier Service Bulletin 350–25–002, dated October 26, 2015. This service information describes procedures for modifying the equipment racks. These documents are distinct since they apply to airplanes having different serial numbers. 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 the same type design.

Costs of Compliance

We estimate that this proposed AD affects 161 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
Modify equipment racks	Up to 10 work-hours × $85 per hour = $850	$1,755	Up to $2,605 ..	Up to $419,405.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2016–9387; Directorate Identifier 2016–NM–182–AD.

(a) Comments Due Date

We must receive comments by May 8, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model BD–100–1A10 airplanes, certificated in any category, serial numbers (S/Ns) 20003 through 20532 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Reason

This AD was prompted by a recent design review of the equipment racks which revealed that the left-hand side (LHS) and right-hand side (RHS) equipment racks were not designed to support the actual weight of all the equipment and the secondary direct current power centers under all loading conditions. We are issuing this AD to prevent structural failure of the LHS or RHS equipment racks in the event of a high energy emergency landing or runway excursion, which could result in blockage of the emergency exit for the flightcrew.

(f) Compliance

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

(g) Modification of the Equipment Racks

Within 90 months after the effective date of this AD, do the modification required by paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For airplanes having S/Ns 20003 through 20500 inclusive: Modify the equipment racks having part numbers (P/Ns) K1000070316–003 (LHS) and K1000070316–004 (RHS), in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–25–39, dated October 26, 2015.

(2) For airplanes having S/Ns 20501 through 20532 inclusive: Modify the equipment rack having P/N K1000070316–004 (RHS only), in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 350–25–002, dated October 26, 2015.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the New York ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2016–26, dated September 14, 2016, 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–2016–9387.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 14, 2017.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–05520 Filed 3–22–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9588; Airspace Docket No. 16–AAL–5]

Proposed Amendment of Class E Airspace, Soldotna, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Soldotna Airport, Soldotna, AK. After review of the airspace, the FAA found redesign is necessary due to procedure modifications. The FAA also proposes to remove the reference to the Soldotna nondirectional radio beacon (NDB) in the legal description. This action would enhance the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before May 8, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2016–9588; Airspace Docket No. 16–AAL–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC, 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Robert LaPlante, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4566.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Soldotna Airport, Soldotna, AK, to conform the airspace to the size necessary for the current arrivals.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2016–9588/Airspace Docket No. 16–AAL–5.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Soldotna Airport, Soldotna, AK. This proposed action is necessary because the airspace as configured exceeds the minimum size required for the current arrivals. The portion of airspace within a 10.1-mile radius of the Soldotna Airport and within 4 miles either side of the 270 degree bearing of the Soldotna NDB would be revised from 4 miles to 2.4 miles and the reference to the NDB would be changed to the Soldotna Airport. The portion of airspace extending from the 10.1-mile radius to 21 miles west of the Soldotna Airport would be modified to 11 miles west of the airport. The portion of airspace within 4 miles south of the 090 degree bearing of the Soldotna Airport would be revised to 3.5 miles.

Class E airspace designations are published in paragraph 6004, 6005, and 6006, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the Environmental Review.

This proposal will criteria of the Regulatory Flexibility Act.be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Soldotna, AK [Modified]

Soldotna, Soldotna Airport, AK
(Lat. 60°28′30″ N., long. 151°02′17″ W.)

That airspace extending upward from 700 feet above the surface within a 10.1-mile radius of the Soldotna Airport and within 2.4 miles either side of the 270° bearing of the Soldotna Airport, AK, extending from the 10.1-mile radius to 11 miles west of the Soldotna Airport, AK, and within 3.5 miles either side of the 090° bearing of the Soldotna Airport, AK, extending from the 10.1-mile radius to 14.3 miles east of the Soldotna Airport, AK; and that airspace extending upward from 1,200 feet above the surface

within a 73-mile radius of the Soldotna Airport.

Issued in Seattle, Washington, on March 9, 2017.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2017–05514 Filed 3–22–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9474; Airspace Docket No. 16–AWP–24]

Proposed Amendment of Class E Airspace Areas, and Establishment of Class E Airspace; Bishop, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E surface area airspace, and modify Class E airspace extending upward from 700 feet above the surface at Bishop Airport (formerly Eastern Sierra Regional Airport), Bishop, CA. The FAA proposes also to establish Class E surface area airspace designated as an extension at this airport. After a review, the FAA found these modifications are necessary for the safety and management of Instrument Flight Rules aircraft operations at the airport.

DATES: Comments must be received on or before May 8, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2016–9474; Airspace Docket No. 16–AWP–24, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Bishop Airport, Bishop, CA.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2016–9474/Airspace Docket No. 16–ANM–24''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E surface area airspace, modifying Class E airspace extending upward from 700 feet above the surface, and establishing Class E surface area airspace designated as an extension, at Bishop Airport (formerly Eastern Sierra Regional Airport), Bishop, CA.

Class E surface area airspace would be modified to within a 5-mile radius (from a 4.2-mile radius) of Bishop Airport, with 2 segments extending from the 5-mile radius to 6.9 miles northwest of the airport, and 9.6 miles north-northwest of the airport, respectively.

Class E airspace extending upward from 700 feet above the surface would

be modified to within a 6.7-mile radius of Bishop Airport, with a 7.2-mile wide segment extending to 11.5 miles northeast of the airport. Also, the Class E airspace extending upward from 1,200 feet above the surface would be reduced to a small area southeast of the airport as the current configuration largely duplicates the Coaldale, NV, Class E en route airspace area. Additionally, Class E airspace extending upward from 12,500 feet MSL would be removed, as this airspace supports no current IFR operations.

These airspace modifications are necessary for the safety and management of IFR operations in standard instrument approach and departure procedures at the airport. The airport name would be changed to be in concert with the FAA's aeronautical database.

Class E airspace designations are published in paragraph 6002, 6004, and 6005, respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AWP CA E2 Bishop, CA [Modified]

Bishop Airport, CA
(Lat. 37°22′23″ N., long. 118°21′49″ W.)
Within a 5-mile radius of Bishop Airport.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AWP CA E4 Bishop, CA [New]

Bishop Airport, CA
(Lat. 37°22′23″ N., long. 118°21′49″ W.)

That airspace extending upward from the surface within 1.2 miles each side of a 315° bearing from Bishop Airport extending from the 5-mile radius of the airport to 6.9 miles northwest of the airport, and within 1.2 miles each side of a 337° bearing from the airport extending from the 5 mile radius of the airport to 9.6 miles northwest of the airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AWP CA E5 Bishop, CA [Modified]

Bishop Airport, CA
(Lat. 37°22′23″ N., long. 118°21′49″ W.)

That airspace upward from 700 feet above the surface within a 6.7-mile radius of Bishop Airport, and within 4 miles west and 3.2 miles east of a 337° bearing from the airport extending from the 6.7-mile radius of the airport to 15.2 miles northwest of the airport. That airspace upward from 1,200 feet above the surface within 3 miles southwest and 11.5 miles northeast of a 157° bearing from the Bishop Airport extending from the airport to 10.4 miles southeast of the airport.

Issued in Seattle, Washington, on March 3, 2017.

Richard Roberts,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2017–05172 Filed 3–22–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–452]

Schedules of Controlled Substances: Temporary Placement of 4-Fluoroisobutyryl Fentanyl Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this notice of intent to issue a temporary order to schedule the synthetic opioid, *N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide (4-fluoroisobutyryl fentanyl or *para*-fluoroisobutyryl fentanyl), into Schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act. This action is based on a finding by the Administrator that the placement of this synthetic opioid into Schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. When it is issued, the temporary scheduling order will impose the administrative, civil, and criminal sanctions and regulatory controls applicable to Schedule I controlled substances under the Controlled Substances Act on the manufacture, distribution, reverse distribution, possession, importation, exportation, research, and conduct of instructional activities, and chemical analysis of this synthetic opioid.

DATES: The date of this notice of intent is March 23, 2017.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION: This notice of intent is issued pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). DEA intends to issue a temporary order to add 4-fluoroisobutyryl fentanyl to Schedule I

under the Controlled Substances Act.[1] The temporary scheduling order will be published in the **Federal Register**, but that order will not be issued before April 24, 2017.

Legal Authority

The Drug Enforcement Administration (DEA) implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are referred to as the ''Controlled Substances Act'' and the ''Controlled Substances Import and Export Act,'' respectively, and are collectively referred to as the ''Controlled Substances Act'' or the ''CSA'' for the purpose of this action. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

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

Section 201 of the CSA, 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance into Schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1); 21 CFR part 1308. The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance into Schedule I of the CSA.[2] The Administrator transmitted notice of his intent to place 4-fluoroisobutyryl fentanyl in Schedule I on a temporary basis to the Assistant Secretary by letter dated January 5, 2017. The Assistant Secretary responded to this notice by letter dated January 17, 2017, and advised that based on a review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications or approved new drug applications for 4-fluoroisobutyryl fentanyl. The Assistant Secretary also stated that the HHS has no objection to the temporary placement of 4-fluoroisobutyryl fentanyl into Schedule I of the CSA. 4-Fluoroisobutyryl fentanyl is not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for 4-fluoroisobutyryl fentanyl under section 505 of the FDCA, 21 U.S.C. 355. The DEA has found that the control of 4-fluoroisobutyryl fentanyl in Schedule I on a temporary basis is necessary to avoid an imminent hazard to the public safety.

To find that placing a substance temporarily into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in Schedule I. 21 U.S.C. 811(h)(1). Substances in Schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

4-Fluoroisobutyryl Fentanyl

The chemical structure of 4-fluoroisobutyryl fentanyl was first described in 1999 in the scientific literature. No approved medical use has been identified for 4-fluoroisobutyryl fentanyl, nor has it been approved by the FDA for human consumption. The recent identification of 4-fluoroisobutyryl fentanyl in drug evidence and the identification of this substance in association with fatal overdose events indicate that this substance is being abused for its opioid properties.

Available data and information for 4-fluoroisobutyryl fentanyl, summarized below, indicate that this synthetic opioid has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. The DEA's three-factor analysis is available in its entirety under ''Supporting and Related Material'' of the public docket for this action at *www.regulations.gov* under Docket Number DEA–452.

Factor 4. History and Current Pattern of Abuse

The recreational abuse of fentanyl-like substances continues to be a significant concern. These substances are distributed to users, often with unpredictable outcomes. 4-Fluoroisobutyryl fentanyl has recently been encountered by law enforcement and public health officials and the adverse health effects and outcomes are demonstrated by fatal overdose cases. The documented negative effects of 4-fluoroisobutyryl fentanyl are consistent with those of other opioids. On October 1, 2014, the DEA implemented STARLiMS (a web-based, commercial laboratory information management system) to replace the System to Retrieve Information from Drug Evidence (STRIDE) as its laboratory drug evidence data system of record. DEA laboratory data submitted after September 30, 2014, are reposited in STARLiMS. Data from STRIDE and

[1] Though DEA has used the term ''final order'' with respect to temporary scheduling orders in the past, this notice of intent adheres to the statutory language of 21 U.S.C. 811(h), which refers to a ''temporary scheduling order.'' No substantive change is intended.

[2] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

STARLiMS were queried on December 21, 2016. STARLiMS registered 21 reports containing 4-fluoroisobutyryl fentanyl, all reported in 2016, from Florida, Maryland, Mississippi, New Jersey, New York, Texas, and the District of Columbia. According to STARLiMS, the first laboratory submission of 4-fluoroisobutyryl fentanyl occurred in March 2016 in Maryland. The DEA is not aware of any laboratory identifications of 4-fluoroisobutyryl fentanyl prior to 2016.

The National Forensic Laboratory Information System (NFLIS) is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by other federal, state and local forensic laboratories across the country. According to NFLIS, the only report of 4-fluoroisobutyryl fentanyl from state or local forensic laboratories was recorded in August 2016 in Pennsylvania. Due to normal lag time in reporting, NFLIS data from August through November 2016 is incomplete.[3]

Evidence suggests that the pattern of abuse of fentanyl analogues, including 4-fluoroisobutyryl fentanyl, parallels that of heroin and prescription opioid analgesics. Seizures of 4-fluoroisobutyryl fentanyl have been encountered in powder form and packaged similar to that of heroin. 4-Fluoroisobutyryl fentanyl has been encountered as a single substance as well as in combination with other substances of abuse, including heroin, fentanyl, furanyl fentanyl, methamphetamine, and cocaine. 4-Fluoroisobutyryl fentanyl has been connected to fatal overdoses, in which insufflation and intravenous routes of administration are documented.

Factor 5. Scope, Duration and Significance of Abuse

Reports collected by the DEA demonstrate 4-fluoroisobutyryl fentanyl is being abused for its opioid properties. This abuse of 4-fluoroisobutyryl fentanyl has resulted in morbidity and mortality (*see* DEA 3-Factor Analysis for full discussion). The DEA has received reports for at least 62 confirmed fatalities associated with 4-fluoroisobutyryl fentanyl. Information on these deaths, occurring as early as August 2016, was collected from post-mortem toxicology and medical examiner reports by the DEA. These deaths were reported from, and occurred in, Maryland. NFLIS and STARLiMS have a total of 22 drug reports in which 4-fluoroisobutyryl fentanyl was identified in drug exhibits submitted to forensic laboratories in 2016 from law enforcement encounters in Florida, Maryland, Mississippi, New Jersey, New York, Pennsylvania, Texas, and the District of Columbia. It is likely that the prevalence of 4-fluoroisobutyryl fentanyl in opioid analgesic-related emergency room admissions and deaths is underreported as standard immunoassays may not differentiate this substance from fentanyl.

The population likely to abuse 4-fluoroisobutyryl fentanyl overlaps with the population abusing prescription opioid analgesics and heroin. This is evidenced by the routes of drug administration and drug use history documented in 4-fluoroisobutyryl fentanyl fatal overdose cases. Because abusers of 4-fluoroisobutyryl fentanyl are likely to obtain this substance through unregulated sources, the identity, purity, and quantity are uncertain and inconsistent, thus posing significant adverse health risks to the end user. Individuals who initiate (*i.e.* use a drug for the first time) 4-fluoroisobutyryl fentanyl abuse are likely to be at risk of developing substance use disorder, overdose, and death similar to that of other opioid analgesics (*e.g.,* fentanyl, morphine, etc.).

Factor 6. What, if Any, Risk There Is to the Public Health

4-Fluoroisobutyryl fentanyl exhibits pharmacological profiles similar to that of fentanyl and other μ-opioid receptor agonists. The toxic effects of 4-fluoroisobutyryl fentanyl in humans are demonstrated by overdose fatalities involving this substance. Abusers of 4-fluoroisobutyryl fentanyl may not know the origin, identity, or purity of this substance, thus posing significant adverse health risks when compared to abuse of pharmaceutical preparations of opioid analgesics, such as morphine and oxycodone.

Based on information received by the DEA, the abuse of 4-fluoroisobutyryl fentanyl leads to the same qualitative public health risks as heroin, fentanyl and other opioid analgesic substances. As with any non-medically approved opioid, the health and safety risks for users are great. The public health risks attendant to the abuse of heroin and opioid analgesics are well established and have resulted in large numbers of drug treatment admissions, emergency department visits, and fatal overdoses.

4-Fluoroisobutyryl fentanyl has been associated with numerous fatalities. At least 62 confirmed overdose deaths involving 4-fluoroisobutyryl fentanyl abuse have been reported from Maryland in 2016. As the data demonstrates, the potential for fatal and non-fatal overdoses exists for 4-fluoroisobutyryl fentanyl and 4-fluoroisobutyryl fentanyl poses an imminent hazard to the public safety.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information, summarized above, the continued uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of 4-fluoroisobutyryl fentanyl poses an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for 4-fluoroisobutyryl fentanyl in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed in Schedule I. Substances in Schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for 4-fluoroisobutyryl fentanyl indicate that this substance has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Administrator, through a letter dated January 5, 2017, notified the Assistant Secretary of the DEA's intention to temporarily place this substance in Schedule I.

Conclusion

This notice of intent initiates a temporary scheduling process and provides the 30-day notice pursuant to section 201(h) of the CSA, 21 U.S.C. 811(h), of DEA's intent to issue a temporary scheduling order. In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Administrator considered available data and information, herein set forth the grounds for his determination that it is necessary to temporarily schedule 4-fluoroisobutyryl fentanyl in Schedule I of the CSA, and finds that placement of this synthetic opioid substance into Schedule I of the CSA is necessary in order to avoid an imminent hazard to the public safety.

The temporary placement of 4-fluoroisobutyryl fentanyl into schedule I

[3] Information was obtained from NFLIS on December 21, 2016.

of the CSA will take effect upon publication of a temporary scheduling order, which will not be issued before April 24, 2017. Because the Administrator hereby finds that it is necessary to temporarily place 4-fluoroisobutyryl fentanyl into Schedule I to avoid an imminent hazard to the public safety, the temporary order scheduling this substance will be effective on the date that order is published in the **Federal Register**, and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2). It is the intention of the Administrator to issue a temporary scheduling order as soon as possible after the expiration of 30 days from the date of publication of this notice. Upon publication of the temporary order, 4-fluoroisobutyryl fentanyl will then be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, research, conduct of instructional activities and chemical analysis, and possession of a Schedule I controlled substance.

The CSA sets forth specific criteria for scheduling a drug or other substance. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for a temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in Schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this notice of intent. In the alternative, even assuming that this notice of intent might be subject to section 553 of the APA, the Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Although the DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice and comment requirements of section 553 of the APA, the DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Administrator will take into consideration any comments submitted by the Assistant Secretary with regard to the proposed temporary scheduling order.

Further, the DEA believes that this temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

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

For the reasons set out above, the DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraph (h)(10) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(10) *N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other names: 4-fluoroisobutyryl fentanyl, *para*-fluoroisobutyryl fentanyl). . . . . (9824).

Dated: March 16, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–05728 Filed 3–22–17; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2013–0167; FRL–9958–59–Region 6]

Approval and Promulgation of Implementation Plans; Louisiana; Volatile Organic Compounds Rule Revision and Stage II Vapor Recovery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions submitted by the State of Louisiana controlling emissions of volatile organic compounds (VOCs) and changes to the Stage II gasoline vapor recovery rule as part of the Louisiana State Implementation Plan (SIP).

DATES: Written comments should be received on or before April 24, 2017.

ADDRESSES: Submit your comments, identified by EPA–R06–OAR–2013–0167, at *http://www.regulations.gov* or via email to *Donaldson.Tracie@epa.gov.* For additional information on how to

submit comments see the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, (214) 665–6633 *Donaldson.Tracie@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct rule without prior proposal because the Agency views this as noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: February 6, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2017–04932 Filed 3–22–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2015–0032; FRL–9957–99]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before April 24, 2017.

ADDRESSES: Submit your comments, identified the docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, 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 Confidential Business Information (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/contacts.html.*

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

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.,* or Michael L. Goodis, Registration Division (RD) (7505P), main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

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).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the pesticide petition summary of interest.

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

1. *Submitting CBI.* Do not submit this information to EPA through *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 preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 and part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated

the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

New Tolerances

1. *PP 5E8439.* (EPA–HQ–OPP–2016–0066). Dow AgroSciences, LLC, 9330 Zionsville Road Indianapolis, IN 46268, requests to establish a tolerance in 40 CFR part 180.638 for residues of the herbicide, pyroxsulam, in or on teff, grain at 0.01 ppm, teff, forage at 0.06 ppm, teff, hay at 0.01 ppm, and teff, straw at 0.03 ppm. The Dow AgroSciences Method GRM 04/17 is used to measure and evaluate the chemical residues of pyroxsulam in wheat commodities. Contact: RD.

2. *PP 6E8496.* (EPA–HQ–OPP–2016–0516). Interregional Research Project No.4 (IR–4), 500 College Road East, Suite 201W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180.478 for residues of the herbicide rimsulfuron, N-[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonyl]-3-(ethylsulfonyl)-2-pyridinesulfonamide, including its metabolites and degradates, in or on berry, low growing, except strawberry, subgroup 13–07H at 0.01 parts per million (ppm), fruit, citrus, group 10–10 at 0.01 ppm, fruit, pome, group 11–10 at 0.01 ppm, fruit, stone, group 12–12 at 0.01 ppm, nut, tree, group 14–12 at 0.01 ppm, vegetable, tuberous and corm, subgroup 1C at 0.1 ppm, fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.01 ppm, and tolerances with regional restrictions in or on fescue, forage at 0.01 ppm; fescue, hay at 0.01 ppm; ryegrass, perennial, hay at 0.01 ppm, and ryegrass, perennial, forage at 0.01 ppm. Analytical methodology, high-pressure liquid chromatography with Electrospray Ionization/tandem Mass Spectrometry (ESI–MS/MS) detection, is available for enforcement purposes. The two methods are ''Analytical Method for the Determination of Rimsulfuron in Watery and Dry Crop Matrices by High Performance Liquid Chromatography (HPLC)/ESI–MS/MS'', DuPont Report 15033 and ''Analytical Method for the Determination of Rimsulfuron in Oily Crop Matrices by HPLC/ESI–MS/MS'', DuPont Report 15027. The limit of quantitation for rimsulfuron with these methods, in raw agricultural commodities and in processed fractions, is 0.01 ppm. Contact RD

3. *PP 6E8510.* (EPA–HQ–OPP–2016–0651). Interregional Research Project No.4 (IR–4), 500 College Road East, Suite 201W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180.458 for residues of the sum of the herbicide clethodim, 2-[(1E)-1-[[[(2E)-3-chloro-2-propenyl] oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one, and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexene-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexene-3-one moieties and their sulphoxides and sulphones, calculated as the stoichiometric equivalent of clethodim, in or on in or on the raw agricultural commodities: almond, hulls at 0.2 parts per million (ppm); brassica, leafy greens, subgroup 4–16B at 3.0 ppm; leaf petiole vegetable subgroup 22B at 0.60 ppm; leafy greens subgroup 4–16A at 2.0 ppm; nut, tree, group 14–12 at 0.2 ppm; okra at 1.5 ppm; onion, green, subgroup 3–07B at 2.0 ppm; stalk and stem vegetable subgroup 22A at 1.7 ppm; vegetable, brassica, head and stem, group 5–16 at 3.0 ppm; and vegetable, fruiting, group 8–10, except okra at 1.0 ppm. Practical analytical methods for detecting and measuring levels of clethodim have been developed and validated in/on all appropriate agricultural commodities and respective processing fractions. The LOQ of clethodim in the methods is 0.2 ppm, which will allow monitoring of food with residues at the levels proposed for the tolerances. Contact: RD.

4. *PP 6F8512.* (EPA–HQ–OPP–2016–0649). Nisso America Inc., on behalf of Nippon Soda Co., Ltd., 88 Pine Street, 14th Floor, New York, NY 10005, requests to establish tolerances in 40 CFR part 180.667 for residues of the fungicide, cyflufenamid, in or on cherry (crop sub-group 12–12A) at 0.6 ppm, fruiting vegetables (crop group 8–10) at 0.2 ppm, and hops at 5.0 ppm. A method was developed using solvent extraction of cyflufenamid from crops and analyzing sample extracts by LC/MS/MS. Contact: RD.

Amended Tolerances

1. *PP 6E8496.* (EPA–HQ–OPP–2016–0516). Inter-regional Research Project No.4 (IR–4), 500 College Road East, Suite 201W, Princeton, NJ 08540, requests to amend the tolerance(s) in 40 CFR part 180.478 upon establishment of tolerances under PP 6E8496 of ''New Tolerances'' referenced above, by removing existing tolerances for residues of the herbicide rimsulfuron, N-[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonyl]-3-(ethylsulfonyl)-2-pyridinesulfonamide, including its metabolites and degradates in or on fruit, citrus, group 10 at 0.01 ppm; fruit, pome group 11 at 0.01 ppm; fruit, stone group 12 at 0.01 ppm; grape at 0.01 ppm; nut, tree group 14 at 0.01 ppm; pistachio at 0.01 ppm; and potato at 0.10 ppm. Analytical methodology, high-pressure liquid chromatography with ESI–MS/MS detection, is available for enforcement purposes. The two methods are ''Analytical Method for the Determination of Rimsulfuron in Watery and Dry Crop Matrices by HPLC/ESI–MS/MS'', DuPont Report 15033 and ''Analytical Method for the Determination of Rimsulfuron in Oily Crop Matrices by HPLC/ESI–MS/MS'', DuPont Report 15027. The limit of quantitation for rimsulfuron with these methods, in raw agricultural commodities and in processed fractions, is 0.01 ppm. Contact RD

2. *PP 6E8510.* (EPA–HQ–OPP–2016–0651). Inter-regional Research Project No.4 (IR–4), 500 College Road East, Suite 201W, Princeton, NJ 08540, requests to amend the tolerance(s) in 40 CFR part 180.458 upon establishment of tolerances under ''New Tolerances'' PP 6E8510 referenced above, by removing established tolerances superseded by this action for residues of the sum of the herbicide clethodim, 2-[(1E)-1-[[[(2E)-3-chloro-2-propenyl]oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one, and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexene-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexene-3-one moieties and their sulphoxides and sulphones, calculated as the stoichiometric equivalent of clethodim in or on the raw agricultural commodities asparagus at 1.7 ppm; brassica, head and stem, subgroup 5A at 3.0 ppm; brassica, leafy greens, subgroup 5B at 3.0 ppm; leaf petioles subgroup 4B at 0.60 ppm; leafy greens subgroup 4A at 2.0 ppm; onion, green at 2.0 ppm; turnip, greens at 3.0

ppm; and vegetable, fruiting, group 8–10 at 1.0 ppm. Practical analytical methods for detecting and measuring levels of clethodim have been developed and validated in/on all appropriate agricultural commodities and respective processing fractions. The Limit of Quantitation (LOQ) of clethodim in the methods is 0.2 ppm, which will allow monitoring of food with residues at the levels proposed for the tolerances. Contact: RD.

Amended Tolerance Exemptions

1. *PP 6G8523.* (EPA–HQ–OPP–2014–0457). J.R. Simplot Company, 5369 W. Irving St., Boise, ID 83706, requests to amend an exemption from the requirement of a tolerance in 40 CFR 174.534 for residues of the plant-incorporated protectant (PIP) VNT1 protein in or on potato. The petitioner believes no analytical method is needed for enforcement purposes because the VNT1 protein concentration is lower than the detectable limit of 100 parts per billion (ppb) in tubers. As the expression levels of the VNT1 protein are below detection limits, it is impractical to demonstrate methods for detecting and measuring the levels of the pesticide residues. Contact: BPPD.

Authority: 21 U.S.C. 346a.

Dated: January 11, 2017.

Michael Goodis,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2017–05704 Filed 3–22–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 365, 385, 386, 387, and 395

[Docket No. FMCSA–2015–0001]

RIN 2126–AB11

Carrier Safety Fitness Determination

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of withdrawal.

SUMMARY: FMCSA withdraws its January 21, 2016, notice of proposed rulemaking (NPRM), which proposed a revised methodology for issuance of a safety fitness determination (SFD) for motor carriers. The new methodology would have determined when a motor carrier is not fit to operate commercial motor vehicles (CMVs) in or affecting interstate commerce based on the carrier's on-road safety data; an investigation; or a combination of on-road safety data and investigation information. FMCSA had recently announced that, rather than move to a final rule, a Supplemental Notice of Proposed Rulemaking (SNPRM) would be the next step in the rulemaking process. However, after reviewing the record in this matter, FMCSA withdraws the NPRM and cancels the plans to develop a Supplemental Notice of Proposed Rulemaking. The Agency must receive the Correlation Study from the National Academies of Science, as required by the Fixing America's Surface Transportation (FAST) Act, assess whether and, if so, what corrective actions are advisable, and complete additional analysis before determining whether further rulemaking action is necessary to revise the safety fitness determination process.

DATES: The NPRM ''Carrier Safety Fitness Determination,'' RIN 2126–AB11, published on January 21, 2016 (81 FR 3562), is withdrawn as of March 23, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Baker, (202) 366–3397, *barbara.baker@dot.gov.* FMCSA office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On January 21, 2016, FMCSA published an NPRM proposing revisions to the current methodology for issuance of a SFD for motor carriers as required by 49 U.S.C. 31144 (81 FR 3562).

The essential elements of the proposed rule included determining safety fitness from not only a comprehensive compliance investigation, but also considering roadside inspections data. Adding roadside inspections to the proposal included a minimum number of inspections and violations to be used for the SFD, as well as providing failure standards, and elimination of the current three-tier rating system (*i.e.,* satisfactory—conditional—unsatisfactory). Also, the NPRM proposed revising the SFD appeals process and establishing implementation and transition provisions for a final rule.

The Agency received 153 initial comment period submissions and 17 reply comment period submissions in response to the NPRM. After considering the comments, FMCSA announced that, rather than move to a final rule, a SNPRM would be the next step in the rulemaking process.[1]

NPRM Comments Generally

Elimination of Three Tier Rating System and Scope of FMCSA Rating Obligation

In the NPRM, FMCSA proposed to eliminate the current three ratings of satisfactory, conditional and unsatisfactory. Instead, the Agency proposed only one rating of ''unfit.'' Commenters including John Brannum, C.H. Robinson, Greyhound Lines, Advocates for Highway and Auto Safety (Advocates), Road Safe America, Truck Safety Coalition and the American Association for Justice supported the termination of the three-tier rating system. These commenters supported the fact that this change would not allow conditional carriers to operate without improving their operations and would make it much clearer for the shipping community to determine which carriers may or may not operate. Specifically, C. H. Robinson noted it has long recommended a two-tiered structure that more clearly signals to shippers, and other industry stakeholders, which carriers should not be hired due to safety concerns. It said all stakeholders seek clear direction from FMCSA, and FMCSA desires stakeholders to properly use data collected by FMCSA. David Gee, an owner of a motor carrier and a broker, commented that the Agency should use the rulemaking to affirm that the shipper and broker community can rely upon the agency's ultimate safety fitness determination in making carrier selections free from state law negligence suits. Greyhound stated it agrees that the change will do away with the misperception that a ''satisfactory'' rating is a sign of operational approval.

However, commenters including the National Motor Freight Traffic Association (NMFTA), Minnesota Trucking Association, School Bus, Inc., National School Transportation Association, and the American Trucking Associations, Inc. (ATA), opposed the proposed change. ATA wrote that the proposal to remove the term ''safety rating'' may have negative, perhaps unanticipated, consequences. Specifically, ATA explained that there will be no means to distinguish fleets whose safety management controls have been verified during compliance reviews (*i.e.* those labeled

[1] See ''FMCSA Sets Schedule for Safety Fitness Determination—Supplemental Notice of Proposed Rulemaking,'' January 12, 2017, at *https://www.fmcsa.dot.gov/newsroom/fmcsa-sets-schedule-safety-fitness-determination-supplemental-notice-proposed-rulemaking.*

''Satisfactory'') from fleets that have not been reviewed. Second, there will be no means to separate fleets with documented deficiencies (*i.e.* those labeled ''Conditional'') from all other fleets not labeled ''Unfit.'' In addition to the inequity this creates for fleets that have earned a ''Satisfactory'' rating, ATA believes it does a disservice to third parties and the general public who should be alerted to the fleets with documented problems. ATA also proposed that FMCSA should allow fleets that have been investigated to maintain their satisfactory ratings; this idea was echoed by NMFTA and the Intermodal Association of North America.

Further, ATA suggested that FMCSA consider three labels: Assessed—Unfit, Assessed—Not Unfit, and Not Assessed. ATA noted that a tiered naming convention such as this could help eliminate confusion and leave third parties better informed.

Some commenters also asserted that FMCSA, contrary to the position expressed in the NPRM, had a statutory duty to determine the fitness of all motor carriers, not just those that are unfit. These commenters claimed that the provisions of 49 U.S.C. 31144 require such actions.

Failure Standards

Advocates expressed concern that, as proposed, one of the assessment methods would only reach the worst 1 percent or 4 percent of carriers, depending on the various categories. Advocates believe that the failure standards were ''artificially selected'' based on the Agency's resources ''instead of making safety the highest priority.'' Advocates recommended that the SFD process should identify each and every motor carrier that is unsafe and needs to be determined ''Unfit.'' Contrarily, to support the Agency's proposal, the International Brotherhood of Teamsters offered that the Agency should only be expected to determine the safety fitness of as many carriers as possible, given existing resources.

Advocates further commented that if the agency plans to use the absolute performance measure based on a snapshot of data to establish the thresholds, there must be a plan to continually update this data to encourage improvements in safety on par with increases in on-road safety, both within the industry and on-road in general.

Knight Transportation agreed with the Agency's proposal that carrier fitness should not be based on relative peer performance. NMFTA added that the assignment of absolute failure standards for the individual categories would provide a carrier with a better method to track and assess its safety compliance based on the roadside inspections, and sooner identify an area which might require additional attention. The International Brotherhood of Teamsters noted that, under the proposed methodology, carriers will benefit from being judged solely on their own performance rather than other companies' safety performance. Intermodal Association of North America also believes that moving to an absolute measurement approach is an improved method over the existing, relative measurements of the Compliance, Safety, and Accountability program.

The American Bus Association questioned how FMCSA can issue a regulatory proposal to change the long standing safety fitness determination process for motor carriers, without providing the failure standards in the NPRM.

C.H. Robinson commended the decision to move away from a percentile ranking and establish firm, fixed safety data targets as represented by the ''absolute measure'' thresholds that began to be published in August 2014. C.H. Robinson found, however, that FMCSA has not educated stakeholders well about how absolute measures are formulated and specifically why absolute measures vary greatly across peer groups. C.H. Robinson suggests FMCSA fully explain absolute measures to shippers, brokers and other stakeholders, to reduce the risk that small business carriers will be adversely impacted. C.H. Robinson believes the potential adverse impact to small carriers regarding this confusion is significant.

In addition, the Alliance for Safe, Efficient and Competitive Truck Transportation (ASCETT) noted that, with declining inspection rates, continued evidence of enforcement anomalies, electronic logging devices (ELDs) and speed limiters, a new NPRM and opportunity for notice and comment is needed. ASCETT further commented that the Agency will have to recalibrate the failure measures through rulemaking to justify new enforcement thresholds. However, ASCETT questioned if the recalibrations would be worth the expense.

Criticism of Data Analysis Period (2011)

Some commenters noted that applying the methodologies to more current data would change the population of carriers that would be identified as proposed unfit. Commenters noted that the number of inspections has decreased since 2011. Additionally, some commenters pointed out that by the end of 2017, ELDs will be mandatory. This change will alter the violations in the Hours of Service category. Also, these commenters stated that if speed limiters become mandated for heavy vehicles this would result in changes to violations.

Comments on Costs

Some commenters alleged that some costs associated with declaring additional carriers ''unfit'' were not considered in the economic analysis. According to these commenters, other costs to consider in addition to those currently in the economic analysis include: Impacts to non-driver staff; costs for improving performance to come into compliance (*e.g.,* attorney, consultant, and employee training costs); costs for administrative appeals; damage to business reputation and creditworthiness; lost sales; opportunity costs of time away from the business; lost revenue to suppliers (such as fuel suppliers); lost capital utilization if vehicles are taken off the market unnecessarily; defaults on loans; repossession of equipment; and personal bankruptcy of owners.

Impacts on Small Businesses

Three commenters suggested that FMCSA should consider changes to the proposed rule for small entities, including retaining the ''corrective action plan'' provision in the current regulation. In addition, some commenters recommended that FMCSA allow for reduced reporting requirements and timetables for small carriers.

Letter to the Secretary of Transportation Urging Withdrawal

On February 15, 2017, a letter from 62 national and regional organizations of motor carriers urged Secretary of Transportation Elaine L. Chao to withdraw the NPRM; a copy of the letter has been added to the docket.

The organizations argued that the proposed rule utilizes SMS data and methodologies, which Congress directed the National Academies of Science to review in the Fixing America's Surface Transportation Act, Public Law 114–94 (FAST Act) (Dec. 4, 2015). The National Academies of Science final report is expected in June 2017. The organizations representing motor property and passenger carriers believe it is ill-advised to develop a new SFD system until the report is received and any necessary reforms are made through corrective actions to the foundational data and methodologies that support

safety fitness determinations. While the petitioners support the goal of an easily understandable, rational SFD system, they believe the NPRM should be withdrawn at this time.

FMCSA Decision To Withdraw the NPRM

Based on the current record, including comments received in response to the NPRM and the February 2017 correspondence to Secretary Chao, FMCSA has decided to withdraw the January 2016 NPRM and, accordingly, cancels the plans to develop a SNPRM as announced by the Agency on January 12, 2017. If FMCSA determines changes to the safety fitness determination process are still necessary and advisable in the future, a new rulemaking would be initiated that will incorporate any appropriate recommendations from the National Academies of Science and the comments received through this rulemaking. The NPRM concerning motor carrier safety fitness determinations is withdrawn.

Issued under the authority delegated in 49 CFR 1.87 on: March 17, 2017.

Daphne Y. Jefferson,

Deputy Administrator.

[FR Doc. 2017–05777 Filed 3–22–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 161128999–7248–01]

RIN 0648–BG47

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2017 Tribal Fishery for Pacific Whiting

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule for the 2017 Pacific whiting fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP), the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Pacific Whiting Act of 2006, as amended. This proposed rule would allocate 17.5 percent of the U.S. Total Allowable Catch (TAC) of Pacific whiting for 2017 to Pacific Coast Indian tribes that have a treaty right to harvest groundfish.

DATES: Comments on this proposed rule must be received no later than April 24, 2017.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2017–0005, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0005,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Barry A. Thom, Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Miako Ushio.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Miako Ushio, phone: 206–526–4644, and email: *miako.ushio@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the Federal Register Web site at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region Web site at *http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific_whiting.html* and at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Background

The regulations at 50 CFR 660.50(d) address the implementation of the treaty rights that Pacific Coast treaty Indian tribes have to harvest groundfish in their usual and accustomed fishing areas in U.S. waters. Section 660.50(d) provides that an allocation or regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe with treaty fishing rights in the area covered by the FMP at the beginning of the biennial harvest specifications and management measures process. The Secretary will develop tribal allocations and regulations in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus. The procedures that NMFS employs in implementing tribal treaty rights under the FMP were designed to provide a framework process by which NMFS can accommodate tribal treaty rights by setting aside appropriate amounts of fish in conjunction with the Pacific Fishery Management Council process for determining harvest specifications and management measures.

Since the FMP has been in place, NMFS has been allocating a portion of the U.S. TAC (called Optimum Yield (OY) or Annual Catch Limit (ACL) prior to 2012) of Pacific whiting to the tribal fishery, following the process established in 50 CFR 660.50(d). The tribal allocation is subtracted from the U.S. Pacific whiting TAC before allocation to the non-tribal sectors.

There are four tribes that can participate in the tribal Pacific whiting fishery: The Hoh Tribe, the Makah Tribe, the Quileute Tribe and the Quinault Indian Nation (collectively, the ''Treaty Tribes''). The Hoh Tribe has not expressed an interest in participating to date. The Quileute Tribe and Quinault Indian Nation have expressed interest in commencing participation in the Pacific whiting fishery. However, to date, only the Makah Tribe has prosecuted a tribal fishery for Pacific whiting, having harvested Pacific whiting since 1996 using midwater trawl gear. Tribal allocations have been based on discussions with the Tribes regarding their intent for those fishing years. Table 1 below provides a history of U.S. TACs and annual tribal allocation in metric tons (mt).

TABLE 1—U.S. TOTAL ALLOWABLE CATCH (TAC) AND ANNUAL TRIBAL ALLOCATION IN METRIC TONS (mt)

Year	U.S. TAC [1] (mt)	Tribal allocation (mt)
2007	242,591	35,000
2008	269,545	35,000
2009	135,939	50,000
2010	193,935	49,939
2011	290,903	66,908
2012	186,037	48,556
2013	269,745	63,205
2014	316,206	55,336
2015	325,072	56,888

TABLE 1—U.S. TOTAL ALLOWABLE CATCH (TAC) AND ANNUAL TRIBAL ALLOCATION IN METRIC TONS (mt)—Continued

Year	U.S. TAC [1] (mt)	Tribal allocation (mt)
2016	367,553	64,322

[1] Beginning in 2012, the United States started using the term Total Allowable Catch, or TAC, based on the Agreement between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting. Prior to 2012, the terms Optimal Yield (OY) and Annual Catch Limit (ACL) were used.

In 2009, NMFS, the states of Washington and Oregon, and the Treaty Tribes started a process to determine the long-term tribal allocation for Pacific whiting; however, no long-term allocation has been determined. In order to ensure Treaty Tribes continue to receive allocations, this rule proposes the 2017 tribal allocation of Pacific whiting. This interim allocation is not intended to set precedent for future allocations.

Tribal Allocation for 2017

In exchanges between NMFS and the Treaty Tribes during January 2017, the Makah Tribe indicated their intent to participate in the tribal Pacific whiting fishery in 2017, and requested 17.5 percent of the U.S. TAC. The Quileute Tribe and the Quinault Indian Nation indicated that they are not planning to participate in 2017. NMFS proposes a tribal allocation that accommodates the Makah request, specifically 17.5 percent of the U.S. TAC. NMFS believes that the current scientific information regarding the distribution and abundance of the coastal Pacific whiting stock suggests that the 17.5 percent is within the range of the tribal treaty right to Pacific whiting.

The Joint Management Committee, which was established pursuant to the Agreement between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting (the Agreement), is anticipated to recommend the coastwide and corresponding U.S./Canada TACs no later than March 25, 2017. The U.S. TAC is 73.88 percent of the coastwide TAC. Until this TAC is set, NMFS cannot propose a specific amount for the tribal allocation. The Pacific whiting fishery typically begins in May, and the final rule establishing the Pacific whiting specifications for 2017 is anticipated to be published by early May. Therefore, in order to provide for public input on the tribal allocation, NMFS is issuing this proposed rule without the final 2017 TAC. However, to provide a basis for public input, NMFS is describing a range of potential tribal allocations in this proposed rule, applying the proposed approach for determining the tribal allocation to a range of potential TACs derived from past harvest levels.

In order to project a range of potential tribal allocations for 2017, NMFS is applying its proposed approach for determining the tribal allocation to the range of U.S. TACs over the last 10 years, 2007 through 2016 (plus or minus 25 percent to capture variability in stock abundance). The range of U.S. TACs in that time period was 135,939 mt (2009) to 367,553 mt (2016). Applying the 25 percent variability results in a range of potential TACs of 101,954 mt to 459,441 mt for 2017. Therefore, using the proposed allocation rate of 17.5 percent, the potential range of the tribal allocation for 2017 would between 17,842 and 80,402 mt.

This proposed rule would be implemented under authority of section 305(d) of the Magnuson-Stevens Act, which gives the Secretary responsibility to ''carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act.'' With this proposed rule, NMFS, acting on behalf of the Secretary, would ensure that the FMP is implemented in a manner consistent with treaty rights of four Treaty Tribes to fish in their ''usual and accustomed grounds and stations'' in common with non-tribal citizens. See *United States* v. *Washington,* 384 F. Supp. 313 (W.D. 1974).

Classification

NMFS has preliminarily determined that the management measures for the 2017 Pacific whiting tribal fishery are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making the final determination, NMFS will take into account the data, views, and comments received during the comment period.

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

As required by section 603 of the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was prepared. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from NMFS.

Under the RFA, the term ''small entities'' includes small businesses, small organizations, and small governmental jurisdictions. A small organization is any nonprofit enterprise that is independently owned and operated and is not dominant in its field. Small governmental jurisdictions such as governments of cities, counties, towns, townships, villages, school districts, or special districts are considered small jurisdictions if their populations are less than 50,000 (5 U.S.C. 601). The Small Business Administration has established size criteria for entities involved in the fishing industry (13 CFR 121.201). A wholesale business primarily engaged in servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A business primarily engaged in seafood processing is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 750 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. For purposes of this rulemaking, NMFS is applying the seafood processor standard to catcher processors (C/Ps) because like mothership (MS) processor vessels, Pacific whiting C/Ps earn the majority of the revenue from processed seafood product. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2, December 29, 2015). A business primarily engaged in commercial fishing (NAICS code 11411) is classified by NMFS as a small business if it is independently owned and operated, is not dominant in its field of operation (including affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

This proposed rule would affect how Pacific whiting is allocated to the following sectors/programs: Tribal, Shorebased Individual Fishing Quota (IFQ) Program Trawl Fishery, MS Coop Program—Whiting At-sea Trawl Fishery, and C/P Coop Program—Whiting At-sea Trawl Fishery. The amount of Pacific whiting allocated to these sectors is based on the U.S. TAC.

Currently, the Shorebased IFQ Program is composed of 172 Quota Share permits/accounts, 152 vessel accounts, and 44 first receivers, only a portion of which participate in the Pacific whiting fishery, listed below. These regulations also directly affect participants in the MS Coop Program, a general term to describe the limited

access program that applies to eligible harvesters and processors in the MS sector of the Pacific whiting at-sea trawl fishery. The MS Coop program currently consists of six MS processor permits, and a catcher vessel fleet currently composed of a single coop, with 34 Mothership/Catcher Vessel (MS/CV) endorsed permits (with three permits each having two catch history assignments). These regulations also directly affect the C/P Coop Program, composed of 10 C/P endorsed permits owned by three companies that have formed a single coop. These co-ops are considered large entities from several perspectives; they have participants that are large entities, have in total more than 750 employees worldwide including affiliates. Although there are three non-tribal sectors, many companies participate in two sectors and some participate in all three sectors. As part of the permit application processes for the non-tribal fisheries, based on the NMFS and Small Business Administration size criteria described above, permit applicants were asked if they considered themselves a small business, and they are asked to provide detailed ownership information. After accounting for cross participation, multiple QS account holders, and affiliation through ownership, NMFS estimates that there are 103 non-tribal entities directly affected by these proposed regulations, 89 of which are considered small businesses. We also expect one tribal entity to fish in 2017. Tribes are not considered small entities for the purposes of RFA. Impacts to tribes are nevertheless considered in this analysis.

This rule will allocate fish between tribal and non-tribal harvesters (a mixture of small and large businesses). Tribal fisheries consist of a mixture of fishing activities that are similar to the activities that non-tribal fisheries undertake. Tribal harvests may be delivered to both shoreside plants and motherships for processing. These processing facilities also process fish harvested by non-tribal fisheries. The effect of the tribal allocation on non-tribal fisheries will depend on the level of tribal harvests relative to their allocation and the reapportionment process. If the tribes do not harvest their entire allocation, there are opportunities during the year to reapportion unharvested tribal amounts to the non-tribal fleets. For example, in 2016 NMFS reapportioned 34,000 mt of the original 64,322 mt tribal allocation. This reapportionment was based on conversations with the tribes and the best information available at the time, which indicated that this amount would not limit tribal harvest opportunities for the remainder of the year. In 2016, the tribal Pacific whiting catch was approximately 2,500 mt in a fishery that spanned late August to mid-October. This reapportioning process allows unharvested tribal allocations of Pacific whiting to be fished by the non-tribal fleets, benefitting both large and small entities. Following are the revised Pacific whiting allocations for 2016 after the reapportionment: The Tribal allocation was 30,322 mt; the C/P Coop allocation was 114,149 mt; the MS Coop allocation was 80,575 mt; and the Shorebased IFQ Program allocation was 141,007 mt.

For the years 2011 to 2016, the total Pacific whiting fishery (tribal and non-tribal) averaged harvests of approximately 292,000 mt annually. As the U.S. Pacific whiting TAC has been highly variable during this time, so have harvests and ex-vessel revenues. The prices for Pacific whiting are largely determined by the world market because most of the Pacific whiting harvested in the U.S. is exported.

In the last year for which detailed economic information is available, the MS fleet had $46.4 million in wholesale revenue, generated $42 million in income and supported 926 jobs on the west coast from Pacific whiting (2014 Economic Data Collection (EDC) Mothership Report). The C/P fleet, which had $99.2 million in wholesale revenue in 2014, generated $142 million in income and supported 1,895 jobs on the west coast from Pacific whiting (2014 Economic Data Collection (EDC) C/P Report). In 2014, eight shoreside Pacific whiting companies processed 61,000 mt of Pacific whiting, for a wholesale revenue of $71 million.

Impacts to Makah catcher vessels who elect to participate in the tribal fishery are measured with an estimate of ex-vessel revenue. In lieu of more complete information on tribal deliveries, total ex-vessel revenue is estimated with the 2016 average IFQ ex-vessel price of Pacific whiting, which was $165 per mt. At that price, the proposed 2017 Tribal allocation (potentially 17,842–80,402 mt) would have an ex-vessel value between $2.9 million and $13.2 million.

NMFS considered two alternatives for this action: The ''No-Action'' alternative and the ''Proposed Action'' alternative. NMFS did not consider a broader range of alternatives to the proposed allocation. The tribal allocation is based primarily on the requests of the tribes. These requests reflect the level of participation in the fishery that will allow them to exercise their treaty right to fish for Pacific whiting. Under the Proposed Action alternative, NMFS proposes to set the tribal allocation percentage at 17.5 percent, as requested by the tribes. This would yield a tribal allocation of between 17,842 and 80,402 mt for 2017. Consideration of a percentage lower than the tribal request of 17.5 percent is not appropriate in this instance. As a matter of policy, NMFS has historically supported the harvest levels requested by the tribes. Based on the information available to NMFS, the tribal request is within their tribal treaty rights. A higher percentage would arguably also be within the scope of the treaty right. However, a higher percentage would unnecessarily limit the non-tribal fishery.

Under the No-Action alternative, NMFS would not make an allocation to the tribal sector. This alternative was considered, but the regulatory framework provides for a tribal allocation on an annual basis only. Therefore, the no-action alternative would result in no allocation of Pacific whiting to the tribal sector in 2017, which would be inconsistent with NMFS' responsibility to manage the fishery consistent with the tribes' treaty rights. Given that there is a tribal request for allocation in 2017, this alternative received no further consideration.

NMFS believes this proposed rule would not adversely affect small entities. The reapportioning process allows unharvested tribal allocations of Pacific whiting to be fished by the non-tribal fleets, benefitting both large and small entities. NMFS has prepared an IRFA and is requesting comments on this conclusion (see **ADDRESSES**).

There are no reporting, recordkeeping or other compliance requirements in the proposed rule.

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Consistent with the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council is a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, NMFS has coordinated specifically with the tribes interested in the Pacific whiting fishery regarding the issues addressed by this rule.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: March 17, 2017.

Alan D. Risenhoover,

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

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

PART 660—FISHERIES OFF WEST COAST STATES

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

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

■ 2. In § 660.50, revise paragraph (f)(4) to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(4) *Pacific whiting.* The tribal allocation for 2017 will be 17.5 percent of the U.S. TAC.

* * * * *

[FR Doc. 2017–05758 Filed 3–22–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 161219999–7250–01]

RIN 0648–BG54

Fisheries of the Exclusive Economic Zone Off Alaska; Integrating Electronic Monitoring Into the North Pacific Observer Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 114 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 104 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA), (collectively referred to as the FMPs). If approved, Amendments 114/104 and this proposed rule would integrate electronic monitoring (EM) into the North Pacific Observer Program. The proposed rule would establish a process for owners or operators of vessels using nontrawl gear to request to participate in the EM selection pool and the requirements for vessel owners or operators while in the EM selection pool. This action is necessary to improve the collection of data needed for the conservation, management, and scientific understanding of managed fisheries. Amendments 114/104 are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMPs, and other applicable laws.

DATES: Comments must be received no later than May 22, 2017.

Per section 313 of the Magnuson-Stevens Act, NMFS will conduct public hearings to accept oral and written comments on the proposed rule in Oregon, Washington, and Alaska during the public comment period.

The first public hearing will be held in conjunction with the April meeting of the North Pacific Fishery Management Council on April 6, 2017, 6 p.m. to 8 p.m., Alaska local time, at the Hilton Hotel, 500 W. 3rd. Ave., Anchorage, AK 99501.

The second public hearing will be on April 18, 2017, 10 a.m. to 12 p.m., Pacific daylight time, at the International Pacific Halibut Commission Office, 2320 West Commodore Way, Suite 300, Seattle, WA 98199.

The third public hearing will be held on April 19, 2017, 1 p.m. to 3 p.m., Pacific daylight time, at the Hatfield Marine Science Center, Lavern Weber Room, 2030 SE. Marine Science Drive, Newport, OR 97365.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0154 by any 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-2016-0154,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- Submit oral or written comments to NMFS at the public hearings listed in this proposed rule under **DATES**.

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), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Amendments 114/104 and the Draft Environmental Assessment/Regulatory Impact Review prepared for this action (collectively the ''Analysis'') may be obtained from *www.regulations.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS at the above address; by email to *OIRA_Submission@omb.eop.gov;* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington or Jennifer Watson, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement, the Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), which was signed in Ottawa, Canada, on March 2, 1953, and was amended by the Protocol Amending the Convention, signed in Washington, DC, on March 29, 1979. The Convention is implemented in the United States by the Northern Pacific Halibut Act of 1982.

This proposed rule would implement Amendments 114/104 to the FMPs. The Council has submitted Amendments 114/104 for review by the Secretary of Commerce, and a Notice of Availability (NOA) of these amendments was published in the **Federal Register** on March 10, 2017, with comments invited through May 9, 2017 (82 FR 13302).

This proposed rule and Amendments 114/104 to the FMPs amend the Council's fisheries research plan prepared under the authority of section 313 of the Magnuson-Stevens Act. NMFS published regulations

implementing the plan on November 21, 2012 (77 FR 70062). The Secretary implemented the fisheries research plan through the North Pacific Observer Program. Its purpose is to collect data necessary for the conservation, management, and scientific understanding of the groundfish and halibut fisheries off Alaska. Magnuson-Stevens Act section 313 requires NMFS to provide a 60-day public comment period on the proposed rule and conduct a public hearing in each state represented on the Council for the purpose of receiving public comment on the proposed regulations. The states represented on the Council are Alaska, Oregon, and Washington. NMFS will conduct a public hearing in each of these states (see **DATES**).

People wanting to make an oral statement for the record at the public hearing are encouraged to provide a written copy of their statement and present it to NMFS at the hearing. If attendance at the public hearing is large, the time allotted for individual oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to NMFS.

Respondents do not need to submit the same comments on the NOA, this proposed rule, and at a public hearing. All relevant written and oral comments received by the end of the applicable comment period, whether specifically directed to the FMP amendments, this proposed rule, or both, will be considered by NMFS in the approval/disapproval decision for Amendments 114/104 and addressed in the response to comments in the final decision.

North Pacific Observer Program

The North Pacific Observer Program (Observer Program) is an integral component in the management of North Pacific fisheries. The Observer Program was created with the implementation of the Magnuson-Stevens Act in the mid-1970s and has evolved from primarily observing foreign fleets to observing domestic fleets. The Observer Program provides the regulatory framework for NMFS-certified observers (observers) to be deployed on board vessels to obtain information necessary for the conservation and management of the groundfish and halibut fisheries. The information collected by observers contributes to the best available scientific information used to manage the fisheries in furtherance of the purposes and national standards of the Magnuson-Stevens Act. Observers collect biological samples and information on total catch, including bycatch, and interactions with protected species. Managers use data collected by observers to manage groundfish catch and bycatch limits established in regulation and to document fishery interactions with protected resources. Managers also use data collected by observers to inform the development of management measures that minimize bycatch and reduce fishery interactions with protected resources. Scientists use observer-collected data for stock assessments and marine ecosystem research.

In 2013, the Council and NMFS restructured the Observer Program to address longstanding concerns about statistical bias of observer-collected data and cost inequality among fishery participants with the funding and deployment structure under the previous Observer Program (77 FR 70062, November 21, 2012). The restructured Observer Program established two observer coverage categories: Partial and full. All groundfish and halibut vessels and processors are included in one of these two categories. NMFS requires fishing sectors in the full coverage category to have all operations observed. The full coverage category includes most catcher/processors, all motherships, and those catcher vessels participating in a catch share program with a transferrable prohibited species catch (PSC) limit. Owners of vessels or processors in the full coverage category must arrange and pay for required observer coverage from a permitted observer provider. This proposed rule would not change the full coverage category.

The partial coverage category includes fishing sectors (vessels and processors) that are not required to have an observer at all times. The partial coverage category includes catcher vessels, shoreside processors, and stationary floating processors when they are not participating in a catch share program with a transferrable PSC limit. Small catcher/processors that meet certain criteria are also in the partial coverage category.

NMFS contracts with an observer provider and determines when and where observers are deployed, based on a scientific sampling design, in the partial coverage category. Each year, NMFS develops an annual deployment plan (ADP) that describes how NMFS plans to deploy observers to vessels and processors in the partial coverage category in the upcoming year.

The ADP describes the scientific sampling design NMFS uses to generate unbiased estimates of total and retained catch, and catch composition in the groundfish and halibut fisheries. The ADP provides flexibility to improve deployment to meet scientifically based estimation needs while accommodating the realities of a dynamic fiscal environment. NMFS's goal is to achieve a representative sample of fishing events, and to do this without exceeding funds collected through the observer fee. This is accomplished by the random deployment of observers in the partial coverage category. NMFS adjusts the ADP each year after a scientific evaluation of data collected under the Observer Program to evaluate the impact of changes in observer deployment and to identify areas where improvements are needed to collect the data necessary to conserve and manage the groundfish and halibut fisheries.

To summarize the ADP process, each year in October, NMFS develops a draft ADP that describes how NMFS plans to deploy observers to vessels in the partial coverage category in the upcoming year. The draft ADP describes the deployment methods NMFS plans to use to collect observer data on discarded and retained catch, including the information used to estimate catch composition and marine mammal and seabird interactions in the groundfish and halibut fisheries. The draft ADP also describes how NMFS will deploy observers to shoreside processing plants or stationary floating processors in the partial coverage category. The Council reviews the draft ADP and considers public comment when developing its recommendations about the draft ADP. The Council may recommend adjustments to observer deployment to prioritize data collection based on conservation and management needs. After NMFS conducts a scientific evaluation of the Council's recommendations, NMFS adjusts the draft ADP as appropriate and finalizes the ADP in December for release prior to the start of the fishing year. NMFS posts the ADP on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov*).

Each year, NMFS also develops an Annual Report that evaluates how well various aspects of the program are achieving program goals, identifies areas where improvements are needed, and includes preliminary recommendations regarding the upcoming ADP. The Council and its Scientific and Statistical Committee (SSC) review the Annual Report in June. This timing allows NMFS and the Council to consider the results of past performance in developing the ADP for the following year. NMFS posts the Annual Report on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov*).

The Observer Declare and Deploy System (ODDS) is an Internet-based

interface that provides information about observer deployment on vessels in the partial coverage category and facilitates communication among the owner or operator of a vessel in the partial coverage category, NMFS, and NMFS' contracted observer provider. Owners and operators of vessels in the partial coverage category enter information about upcoming fishing trips into ODDS and receive information about whether a trip has been selected for observer coverage.

The restructured Observer Program created a new system of fees to pay for the cost of implementing observer coverage in the partial coverage category. Vessels and processors included in the partial coverage category pay a fee of 1.25 percent of the ex-vessel value of fishery landings to NMFS to fund the deployment of observers in the partial coverage category. Under section 313 of the Magnuson-Stevens Act, the fees shall not exceed 2 percent of the fishery ex-vessel value.

The restructured Observer Program expanded the vessels subject to observer coverage to include groundfish vessels less than 60 ft LOA and halibut vessels that had not been previously required to carry an observer. Expanding observer coverage to the approximately 950 previously unobserved vessels improved NMFS' ability to estimate total catch in all Federal fisheries in the North Pacific.

Even before implementing the restructured Observer Program, many vessel owners and operators new to the Observer Program were opposed to carrying an observer (77 FR 70062, November 21, 2012). Vessel owners and operators explained that there is limited space on board for an additional person or limited space in the vessel's life raft.

Some vessel owners, operators, and industry representatives advocated for the use of EM instead of having an observer on board their vessels (77 FR 70062, November 21, 2012). To address their concerns, the Council and NMFS have been actively engaged in developing EM as a tool to collect fishery data in the nontrawl fisheries. Over the past several years, NMFS and industry participants have undertaken cooperative research to test the applicability and reliability of EM systems. An EM system uses cameras, video storage devices, and associated sensors to record and monitor fishing activities.

In 2013, NMFS developed, and the Council adopted, the Strategic Plan for Electronic Monitoring and Electronic Reporting in the North Pacific to guide integration of monitoring technologies into North Pacific fisheries management and provide goals and benchmarks to evaluate attainment of goals (available on the Alaska Fisheries Science Center Web site at *http://www.afsc.noaa.gov/Publications/AFSC-TM/NOAA-TM-AFSC-276.pdf*).

In 2014, the Council appointed the EM Workgroup to develop an EM program to integrate into the Observer Program. The EM Workgroup provides a forum for stakeholders, including the commercial fishery participants, NMFS, Alaska Department of Fish and Game, and EM service providers, to cooperatively and collaboratively design, test, and develop EM systems, and to identify key decision points related to operationalizing and integrating EM systems into the Observer Program in a strategic manner. The EM Workgroup developed a cooperative research program to inform evaluation of multiple EM program design options and consider various EM integration approaches to achieve management needs.

The cooperative research includes analytical and fieldwork components to address the following four elements: Deployment of EM systems for operational testing, research and development of EM technologies, development of infrastructure to support EM implementation, and analyses to support EM implementation. This approach enabled the EM Workgroup to identify and resolve implementation issues associated with integrating EM into the Observer Program. Data and analysis produced on costs, data quality, risks, operational procedures, and vessel compatibility informed decisions on implementation phases, future investments in technology, and the tools that will best meet NMFS, Council, and stakeholder management objectives. The cooperative research program was implemented through research projects and pre-implementation plans in 2015, 2016, and 2017. The cooperative research to date has shown that data from EM systems can effectively identify almost all of the species or species groupings required for management, that the systems are sufficiently reliable, and that image quality is generally high. Additional information on the work of the EM Workgroup is provided in the Analysis (see **ADDRESSES**).

Based on input received from the EM Workgroup, and through the Council process, the Council and NMFS developed this proposed action to provide an option for participants in the partial coverage category using nontrawl gear to choose to be in the EM selection pool instead of an observer selection pool. EM selection pool means the defined group of vessels from which NMFS will randomly select the vessels required to use an EM system.

In recommending this action, the Council used the term ''fixed gear'' to describe vessels using pot or longline gear. The Council's use of this term is broader than the definition of fixed gear in Federal regulations at § 679.2, which defines fixed gear as including only hook-and-line gear and pot gear in the halibut or sablefish fishery. The Council intended for EM to be an option available to vessels using any type of gear other than trawl gear, and not to limit the potential use of EM to only those vessels using hook-and-line gear or pot gear in the halibut or sablefish fishery. To meet the intent of the Council, this proposed rule uses ''nontrawl gear'' except when quoting the Council in this preamble, or when specifically referring to fixed gear used in the halibut and sablefish fisheries. Federal regulations at § 679.2 define nontrawl gear as pot and longline gear. Longline gear is defined at § 679.2 as including hook-and-line, jig, troll, and handline or the taking of fish by means of such a device. The Council focused the cooperative research on hook-and-line gear and pot gear. Additional cooperative research would be necessary to expand EM to other gear types, as explained in section 3.5 of the Analysis (see **ADDRESSES**).

Objectives of and Rationale for Amendments 114/104 and This Proposed Rule

In December 2016, the Council adopted Amendments 114/104. The Council and NMFS developed EM for data collection for the nontrawl gear fisheries to address their desire for an alternative way to collect fisheries data in consideration of the operating requirements in these fisheries. EM systems can collect at-sea data for NMFS to estimate discards of fish, including halibut, and mortality of seabirds. EM has the potential to reduce economic and operational costs associated with deploying human observers throughout coastal Alaska. EM has the potential to reduce monitoring costs relative to observer coverage because it does not require deploying a person on the vessel and eliminates the logistical and travel expenses that this deployment generates. Through the use of EM, it may be possible to cost effectively obtain at-sea data from a broader cross-section of the nontrawl gear fleet and increase NMFS' and the Council's flexibility to respond to the scientific and management needs of

these fisheries. The Council's statement of purpose and need follows:

To carry out their responsibilities for conserving and managing groundfish resources, the Council and NMFS must have high quality, timely, and cost-effective data to support management and scientific information needs. In part, this information is collected through a comprehensive fishery monitoring program for the groundfish and halibut fisheries off Alaska, with the goals of verifying catch composition and quantity, including of those species discarded at sea, and collecting biological information on marine resources. While a large component of this monitoring program relies on the use of human observers, the Council and NMFS have been on the path of integrating technology into our fisheries monitoring systems for many years, with electronic reporting systems in place, and operational EM in a compliance capacity in some fisheries. More recently, research and development has focused on being able to use EM as a direct catch estimation tool in fixed gear fisheries.

The fixed gear fisheries are diverse in their fishing practices and vessel and operational characteristics, and they operate over a large and frequently remote geographical distribution. The Council recognizes the benefit of having access to an assorted set of monitoring tools in order to be able to balance the need for high-quality data with the costs of monitoring and the ability of fishery participants, particularly those on small vessels, to accommodate human observers on board. EM technology has the potential to allow discard estimation of fish, including halibut PSC and mortality of seabirds, onboard vessels that have difficulty carrying an observer or where deploying an observer is impracticable. EM technology may also reduce economic, operational and/or social costs associated with deploying human observers throughout coastal Alaska. Through the use of EM, it may be possible to affordably obtain at-sea data from a broader cross-section of the fixed gear groundfish and halibut fleet.

The integration of EM into the Council's fisheries research plan is not intended to supplant the need for human observers. There is a continuing need for human observers as part of the monitoring suite, and there will continue to be human observer coverage at some level in the fixed gear fisheries, to provide data that cannot be collected via EM (*e.g.,* biological samples).

The Council and NMFS have considerable annual flexibility to provide observer coverage to respond to the scientific and management needs of the fisheries. By integrating EM as a tool in the fisheries monitoring suite, the Council seeks to preserve and increase this flexibility. Regulatory change is needed to specify vessel operator responsibilities for using EM technologies, after which the Council and NMFS will be able to deploy human observer and EM monitoring tools tailored to the needs of different fishery sectors through the Annual Deployment Plan.

Integrating Electronic Monitoring Into the Observer Program

This proposed rule would establish the process and structure for use of an EM system to monitor catch and bycatch on those vessels using nontrawl gear in the partial coverage category of the Observer Program that choose to be in the EM selection pool. An EM system uses cameras, video storage devices, and associated sensors to record and monitor fishing activities. To implement EM, NMFS would set up a contract or grant with one or multiple EM service providers to install and service EM equipment, and to collect and review EM data. The contract or grant would specify hardware and field service specifications, EM data review requirements, and data and archiving requirements. ''EM service provider'' means any person, including their employees or agents, that NMFS contracts with to provide EM services, or to review, interpret, or analyze EM data.

EM data would supplement observer data from other nontrawl gear vessels. Some data necessary for catch estimation, fishery management, and stock assessment cannot be collected from EM systems. NMFS would obtain this data from observers on board other nontrawl gear vessels that are fishing in similar areas and at similar time periods. The Council and NMFS would make EM system and observer deployment decisions following the sampling design in the ADP, and subsequently analyze the deployment data in the Annual Report.

NMFS and the Council would define the criteria in the ADP for vessels to be eligible to participate in EM. The criteria for being in the EM selection pool may include, but are not limited to, gear type, vessel length, area fished, number of trips or total catch, sector, target fishery, and home or landing port.

Participation in the EM selection pool would be voluntary. Any owner or operator of a vessel that meets the EM selection pool criteria could annually request to be in the EM selection pool using the process established in this proposed rule if they are willing to comply with the provisions established under this proposed rule. While there are additional responsibilities for the owner or operator of a vessel in the EM selection pool to install and maintain the EM system, NMFS' intent is largely to allow the vessel to continue its normal fishing practice and allow the cameras to capture data observations that an EM service provider then extracts onshore through video review.

NMFS intends to use discretionary appropriated funds from its budget for EM system deployment until observer fees are available to fund EM system deployment and NMFS issues a contract with one or more EM service providers. Once observer fee proceeds are available and the contract is issued, NMFS would use the observer fee proceeds collected from partial coverage category participants to pay for both EM system deployment and observer deployment in the partial coverage category. Section 313 of the Magnuson-Stevens Act authorizes the Council to use the fees collected under that section to pay for the cost of implementing the fisheries research plan, including stationing EM systems on vessels and for inputting collected data. The annual decision to apportion fees between observer deployment and EM system deployment would be made by the Council and NMFS during the ADP process.

Through the ADP process, the Council and NMFS will consider how to optimize observer and EM system deployment for fisheries in the partial coverage category each year, based on an analysis of the costs, budget, monitoring goals, and fishing effort in the partial coverage category. The ADP process is explained above under North Pacific Observer Program. Work is ongoing to develop the necessary annual analysis for determining the criteria for the EM selection pool and balancing EM system deployment with deployment of observers within budget limits.

The amount of fee revenues collected would determine the level of costs that NMFS could incur to deploy EM systems and to deploy observers. The Analysis provides a detailed discussion of the potential costs of EM system deployment (see **ADDRESSES**). Since the fee is based on the ex-vessel value of harvested fish, which fluctuates annually, the amount of funding available for deploying observers and EM systems will also fluctuate. NMFS would need to adjust observer coverage and EM coverage levels to align anticipated annual costs with available fee revenue. NMFS and the Council may also modify the criteria for participating in the EM selection pool to control costs. In consultation with the Council, NMFS would allocate funds between EM and observers to achieve the most precision for the least cost. The specific deployment decisions, including the eligibility criteria for vessels to participate in EM, could vary from year to year based on the analysis conducted through the ADP process. Through using this existing scientific process for EM system deployment, NMFS would gather reliable data necessary for the

conservation, management, and scientific understanding of the fisheries covered by the fisheries research plan.

Because it is likely that NMFS would establish a contract for multiple years and some of the deployment decisions have a significant impact on EM service provider costs (for example, the number and location of primary service ports), NMFS and the Council may make some deployment decisions for the duration of the contract, rather than annually in the ADP. Similarly, NMFS anticipates that the EM system will change over time as technological improvements are made. These technological changes could be accommodated in the contract or grant.

An important part of the ADP analysis will be identifying and understanding gaps in observer data when a portion of the partial coverage vessels participates in the EM selection pool. Appendix 1 of the Analysis (see **ADDRESSES**) provides an example of the type of analysis that would be conducted annually to ensure that sufficient observers are deployed to maintain representative data (such as biological samples and average weights) that cannot be collected with an EM system.

Proposed Regulations

This proposed rule would implement the requirements described below to allow owners or operators of vessels using nontrawl gear to choose to use an EM system in place of an observer.

How would a vessel join the EM selection pool?

This proposed rule would establish the process by which vessel owners or operators could join the EM selection pool (see proposed § 679.51(f)(1)). Owners or operators of vessels that use nontrawl gear and are in the partial coverage category could request to be in the EM selection pool. Each year, vessel owners would have the opportunity to join or leave the EM selection pool through an application available through ODDS. Vessel owners that want to be in the EM selection pool would need to request in ODDS to participate in EM by November 1 to use EM in the following calendar year. NMFS would notify the vessel owner through ODDS whether that vessel has been approved or denied for the EM selection pool. NMFS would deny vessels if those vessels did not meet the EM selection pool criteria specified in the regulations and described in the ADP. Vessel owners would have the opportunity to appeal NMFS' decision denying the request to be in the EM selection pool (see proposed § 679.51(f)(1)(vii)).

The November 1 deadline would balance the interest of potential EM participants to have an opportunity to review the draft ADP available in October and its description of the EM selection pool before joining the EM selection pool with NMFS' interest in determining the number and types of vessels assigned to the EM selection pool before finalizing the ADP in December.

NMFS would approve a request for placement in the EM selection pool based on criteria specified in the regulations and described in the ADP. Criteria may include, but are not limited to, availability of EM systems, vessel gear type, vessel length, area fished, number of trips or total catch, sector, target fishery, and home or landing port. NMFS, in consultation with the Council, will establish the EM selection pool criteria based on the scientific sampling design, budget and cost considerations, and data collection goals.

Once NMFS has approved a vessel for participation in the EM selection pool, that vessel would be in the EM selection pool for the entire calendar year following the November 1 application deadline. The vessel would remain in the EM selection pool each subsequent year until the vessel owner or operator requests to leave or NMFS removes the vessel from the EM selection pool because it no longer meets the EM selection pool criteria or NMFS disapproves the vessel monitoring plan (VMP). A VMP is the document that describes how fishing operations on the vessel will be conducted and how the EM system and associated equipment will be configured to meet the data collection objectives and purpose.

Vessels would either be in the EM selection pool or in an observer selection pool. Vessels would not be subject to both EM coverage and observer coverage.

How would a vessel leave the EM selection pool?

The vessel owner or operator would use ODDS to submit a request to leave the EM selection pool by November 1 for the following calendar year (see proposed § 679.51(f)(1)(ix)).

NMFS may also remove a vessel from the EM selection pool for the following calendar year. NMFS would remove a vessel if NMFS disapproves the vessel's VMP or if the vessel no longer meets the EM selection pool criteria. Vessels would not be able to leave the EM selection pool during a calendar year in order to maintain the sampling design used for that year.

How would a vessel owner or operator install the EM system?

Once a vessel is approved for the EM selection pool, the vessel owner or operator would make the vessel available to the NMFS-contracted EM service provider for installation of all required EM system components. During the installation, it would be the vessel owner's responsibility to assist the EM service provider with planning the best wiring routes and installing sensors that interface with the vessel's equipment, such as hydraulic oil pressure and engine oil pressure. The specifications for the EM components that would be installed would be defined in the contract between NMFS and the EM service provider. The EM service provider would install cameras in locations that meet the catch accounting objectives annually specified in the ADP.

If a vessel already has an EM system, it could use that EM system or it could modify that EM system as necessary to meet the specifications in the VMP. That vessel owner or operator would need to work with the EM service provider to develop and submit a VMP to NMFS Alaska Region. For example, a vessel may have an existing EM system on board because that vessel participates in another federally managed fishery that has an EM program.

How would a vessel owner or operator develop a Vessel Monitoring Plan (VMP)?

Once approved for the EM selection pool and prior to registering a fishing trip in ODDS, the vessel owner or operator must develop a VMP with the EM service provider and submit it to NMFS for approval (see proposed § 679.51(f)(4)). A vessel in the EM selection pool would be required to have a copy of a valid NMFS-approved VMP on board before that vessel goes fishing. If NMFS does not approve the VMP, NMFS will issue an IAD to the vessel owner or operator that will explain the basis for the disapproval. The vessel owner or operator may file an administrative appeal under the administrative appeals procedures set out at 15 CFR part 906.

The vessel owner or operator would work with the EM service provider to develop a VMP. The VMP would describe how fishing operations on the vessel are conducted, including how gear is set, how catch is brought on board, and where catch is retained and discarded. The VMP would also describe how the EM system and associated equipment would be

configured to meet the data collection objectives and purpose of the EM program, including camera locations to cover all fishing activities, any sensors to detect fishing activities, and any special catch handling requirements to ensure the data collection objectives can be met. The VMP would also include methods to troubleshoot the EM system and instructions for ensuring the EM system is functioning properly. These required components of the VMP would be detailed in the VMP template and in the contract between NMFS and the EM service provider.

NMFS would provide a VMP template for guidance to the EM service provider and the vessel owner or operator on the elements NMFS would require in the final approved VMP. NMFS would make this VMP template available on the NMFS Alaska Region Web site at *https://alaskafisheries.noaa.gov/.* This VMP template would be available annually prior to the November 1 deadline to participate in the EM selection pool to allow vessel owners and operators an opportunity to review the requirements for the upcoming year. For informational purposes, the 2017 pre-implementation VMP is available on the North Pacific Fishery Management Council Web site at *https://npfmc.org/.*

Once the VMP is complete and the vessel owner or operator agrees to comply with the components of the VMP, the vessel owner or operator must sign and submit the VMP to NMFS via email or other electronic means. NMFS would review the VMP for completeness and may request additional clarification. If the VMP meets the requirements established in the VMP template, NMFS would approve the VMP for the calendar year. The vessel owner or operator would be required to keep a copy of the VMP aboard the vessel and make it available to NOAA Office of Law Enforcement (NOAA OLE) or other NMFS-authorized officer or personnel upon request.

After reviewing the data from a fishing trip selected for EM coverage, NMFS may determine that the approved camera location(s) in the VMP or fishing activities conducted by the vessel crew outlined in the VMP do not allow for the data collection necessary for catch accounting. Additionally, the vessel operator may want to have a camera moved if it impedes his or her ability to fish, or the operator may reconfigure the vessel to change fishing activities during the season that would warrant changes to the VMP. Whether requested by the vessel owner or operator or by NMFS, the vessel owner or operator would be required to make any changes to the VMP with the assistance of the EM service provider. The NMFS contract with the EM service provider would describe the permissible changes. These permissible changes would likely be limited to actions that enhanced data collection or maintained the same quality of data in cases where camera locations impede the ability to fish or vessel reconfigurations occur. These amendments to the VMP would be signed and submitted to NMFS. The vessel would be allowed to begin another fishing trip, provided that NMFS has received the VMP amendments in writing. If the amended VMP did not meet the data collection needs, NMFS would inform the EM service provider and the vessel owner or operator that the VMP would need to be updated before another trip selected for EM coverage could begin.

How would NMFS select a vessel to use an EM system on a fishing trip?

Once in the EM selection pool and after the vessel has an approved VMP, the vessel operator would register fishing trips in ODDS (see proposed § 679.51(f)(2)). ODDS would notify the vessel operator when the vessel is selected to use the EM system and instructions would be provided in ODDS. The ADP would specify the EM selection rate—the portion of trips that are sampled—for each calendar year. NMFS and the Council may change the EM selection rate from one calendar year to the next to achieve efficiency, cost savings, and data collection goals. EM selection rates would not change during a calendar year.

What are a vessel owner's or operator's responsibilities?

Vessel owners or operators would be required to maintain the EM system in working order, including ensuring the EM system is powered and functioning throughout the trip, keeping cameras clean and unobstructed, and ensuring the system is not tampered with (see proposed § 679.51(f)(5)). The vessel owner or operator would also need to ensure that power is maintained to the EM system at all times when the vessel is underway or the engine is operating. The vessel operator would also be required to conduct a system function test before each trip to ensure the EM system is working properly before departing.

Before each set is retrieved the vessel operator would need to verify that all components of the EM system are functioning. Instructions for completing this verification would be provided in the vessel's VMP.

Vessel owners or operators would be prohibited from tampering with the EM system or harassing the EM service provider. Additional prohibitions exist to ensure the EM system functions and the data from the systems is usable for fisheries management (see proposed § 679.7(j)).

What happens if an EM system malfunctions?

The VMP would list EM system malfunctions that are considered high priority to the data collection objectives and those malfunctions that are considered low priority to the data collection objectives. The VMP would also provide guidance about the procedures to follow if either of these types of malfunctions were detected. The proposed regulations describe the responsibilities of the vessel owner or operator in case an EM system malfunctions (see proposed § 679.51(f)(5)(vi)).

If a high priority malfunction were detected during the pre-departure function test, the vessel would be required to remain in port for up to 72 hours to allow an EM service provider time to conduct repairs. Remaining in port for up to 72 hours would allow time for an EM service provider to travel to most remote ports in Alaska and give him or her the necessary time needed to conduct repairs. If the repairs could not be completed within this time frame, NMFS would release the vessel from EM coverage for that trip and the vessel operator would be allowed to depart. However, the vessel owner or operator would be required to repair the malfunction prior to departing on a subsequent fishing trip, and the vessel would automatically be selected for EM coverage for that fishing trip.

If a low priority malfunction were detected during the pre-departure function test, the vessel operator would be allowed to depart on the selected trip as long as the procedures for low priority malfunctions described in the vessel's VMP were followed. At the end of the trip the vessel operator would be required to work with the EM service provider to repair the malfunction. The vessel operator could not depart on another trip selected for EM coverage with this malfunction unless the vessel operator had contacted the EM service provider.

If an EM system malfunction were to occur during a fishing trip selected for EM coverage, prior to retrieving the set the vessel operator would be required to attempt to correct the problem using the provisions described in the vessel's VMP. If the malfunction could not be repaired at sea, the vessel operator would be required to contact the EM service provider at the end of the trip.

The malfunction would need to be repaired before the vessel could depart on another fishing trip selected for EM coverage (see proposed § 679.51(f)(5)). This requirement mirrors the pre-departure function test requirements.

What happens when the fishing trip ends?

At the end of the fishing trip selected for EM coverage, the vessel owner or operator would close the trip in ODDS and follow the instructions in ODDS. The vessel owner or operator would be required to submit the video data storage devices to NMFS within 2 business days of completing the fishing trip selected for EM coverage, using a method that requires a signature for delivery and provides notification of delivery. Additional documentation described in the vessel's VMP would need to be submitted along with the video data storage devices. Specific instructions for shipping video data storage devices would be included in the vessel's VMP (see proposed § 679.51(f)(5)(vii)). The video storage devices would need to be submitted within 2 business days so that timely review of the data could occur and be provided for the management of the fishery.

How would a vessel use EM for fishing Individual Fishing Quota (IFQ) or Community Development Quota (CDQ) under the exception in Proposed § 679.7(f)(4)?

Currently, under § 679.7(f)(4), unless a vessel has an observer aboard and maintains the applicable daily logbook, the vessel cannot retain halibut or sablefish in excess of the total amount of unharvested IFQ or CDQ applicable to that vessel for the IFQ regulatory area in which the vessel is operating and that is currently held by all IFQ or CDQ permit holders aboard the vessel. This proposed rule would expand the exception to a vessel in the EM selection pool. This proposed rule provides that the owner or operator of a vessel in the EM selection pool, that complies with the requirements of § 679.51(f)(6) and maintains the applicable daily logbook, could retain halibut or sablefish in excess of the total amount of unharvested IFQ or CDQ applicable to that vessel for the IFQ regulatory area in which the vessel is operating and that is currently held by all IFQ or CDQ permit holders aboard the vessel. If a vessel is not part of the EM selection pool and is not selected for observer coverage for that fishing trip, the vessel owner or operator would continue to be prohibited from retaining halibut or sablefish in excess of the total amount of unharvested IFQ or CDQ applicable to that vessel for the IFQ regulatory area in which the vessel is operating.

Under proposed § 679.51(f)(6), a vessel owner or operator in the EM selection pool would use ODDS to identify when he or she intends to fish in multiple areas and to commit to using a functioning EM system on the whole trip, even if the vessel was not selected for EM coverage. The vessel owner or operator would be required to meet all the same responsibilities as if the vessel's fishing trip had been selected for EM coverage in ODDS. These include having a copy of a valid NMFS-approved VMP on board before the vessel goes fishing, maintaining the EM system in working order, and submitting the required information at the end of the trip. All these requirements are described in more detail above.

Because the EM system in this instance would be used as a compliance monitoring tool, some additional regulatory requirements would apply to the vessel owner and operator. The EM system would be required to be powered continuously during the entire fishing trip. The vessel owner or operator would need to describe in the VMP the alternative methods the vessel would use to show that the vessel had not moved or fished if the vessel owner or operator intends to power down the EM system during periods of non-fishing, such as at night when the vessel crew is sleeping. These alternative methods could include using VMS or installing a sensor that records when the engine is powered down.

Additionally, if during a fishing trip an EM system malfunction occurred that did not allow recording of essential information about where the vessel was fishing and what amount of halibut or sablefish catch was coming aboard, the vessel operator would be required to cease fishing immediately and to contact NOAA OLE. This requirement is necessary because information about the location of fishing and the amount caught in each area is paramount to allowing vessels to fish in multiple areas using the EM system exception at § 679.7(f)(4).

Other Regulatory Changes

NMFS proposes to revise regulations for clarity and efficiency, as follows—

- Remove expired regulations at §§ 679.7(j) and 679.23(d)(5), and remove § 679.23(d)(4), which was previously removed and reserved. Section 679.7(j) was only applicable through December 31, 2002 (67 FR 64315; October 18, 2002). Section 679.23(d)(5) was only applicable through July 17, 2001 (66 FR 31845; June 13, 2001). This proposed rule would revise § 679.7(j) to list prohibitions to ensure the EM system functions and the data from the systems are usable for fisheries management.
- Correct regulation citations in § 679.21(a)(2)(ii) and (a)(3) that cross reference paragraphs that NMFS moved in previous rulemaking.
- Remove the word ''observer'' from the phrase ''partial observer coverage category'' in § 679.51(a)(1) because, with this proposed rule, the partial coverage category would include EM and observers.
- Revise § 679.51(a)(1)(ii)(B) to remove reference to vessel and trip selection pools because, with this proposed rule, NMFS is adding the EM selection pool.
- Remove § 679.51(a)(1)(iii)(D)(*2*) because this proposed rule would replace that EM provision.
- Remove the expired deadline for the Bering Sea and Aleutian Islands (BSAI) trawl catcher vessel placement in the full observer coverage category at § 679.51(a)(4)(iii).

Classification

Pursuant to sections 304(b) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

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

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended Amendments 114/104 based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis (IRFA)

This IRFA was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA), to describe why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules;

and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of the proposed action, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here.

Number and Description of Small Entities Regulated by the Proposed Action

The entities directly regulated by this action are those entities that harvest groundfish and halibut using nontrawl gear and are subject to observer coverage in the partial coverage category of the Observer Program. These directly regulated entities include vessels that fished with nontrawl gear in State waters only if those vessels had an Federal Fisheries Permit (FFP), which makes them subject to Federal observer regulations. Since participation in the EM selection pool is voluntary, only those vessels that choose to participate in the EM selection pool would be directly regulated by this proposed rule.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

The estimated number of vessels that use nontrawl gear in the partial coverage category that are small entities might be overstated. Conversely, the number of non-small entities might be understated. The RFA requires a consideration of affiliations between entities for the purpose of assessing whether an entity is classified as small. The estimates below do not take into account all affiliations between entities. There is not a strict one-to-one correlation between vessels and entities; many persons and firms are known to have ownership interests in more than one vessel, and many of these vessels with different ownership are otherwise affiliated with each other. Vessels that have types of affiliation that are not tracked in available data (*i.e.,* ownership of multiple vessels or affiliation with processors) may be misclassified as a small entity.

In 2015, 981 vessels (*i.e.,* harvesting entities) participated in the groundfish and halibut fisheries directly regulated by the proposed action. Those 981 catcher vessels include 255 vessels that only operated in State waters and possessed an FFP; all of those 255 vessels are classified as small entities. According to data provided by the Alaska Fisheries Information Network, the analysts estimate that 950 of the 981 harvesting entities are classified as small entities. All of the 31 vessels that are classified as non-small entities were members of harvesting cooperatives whose combined gross receipts were greater than $11.0 million in 2015, the most recent year for which complete revenue data is available. Each of the 31 vessels classified as non-small entities is affiliated with a crab cooperative, six are affiliated with a Central GOA Rockfish Program cooperative, two are affiliated with an American Fisheries Act cooperative, and one is affiliated through ownership with the freezer longline cooperative (some entities are affiliated with more than one cooperative across different North Pacific fisheries).

Table 1 provides a count of small and non-small entities (*i.e.,* vessels). The first row shows all vessels with FFPs that fished with nontrawl gear in 2015. The second row is limited to vessels that fished in Federal waters. The bottom four rows shows the number of entities by gear type and area fished. Those rows should not be summed vertically because vessels that fished with both gear types or in both management areas would be double-counted. No vessel less than 40 ft LOA is classified as a non-small entity, and only one vessel less than 57.5 ft LOA is classified as a non-small entity.

TABLE 1—COUNT OF SMALL AND NON-SMALL ENTITIES IN THE UNIVERSE OF DIRECTLY REGULATED VESSELS IN 2015

	Small Entity	Non-Small Entity	Total
Nontrawl catcher vessels (Federal and State waters)	950	31	981
Nontrawl catcher vessels (Federal waters only)	695	31	726
Hook-and-line catcher vessels in Federal waters in the GOA	584	7	591
Hook-and-line catcher vessels in Federal waters in the BSAI	114	7	121
Pot catcher vessels in Federal waters in the GOA	86	4	90
Pot catcher vessels in Federal waters in the BSAI	22	21	43

Recordkeeping, Reporting, and Other Compliance Requirements

This proposed rule adds additional reporting, recordkeeping, and other compliance requirements for vessels that choose to participate in the EM selection pool and vessels that choose to use the exemption in § 679.7(f)(4) to harvest IFQ or CDQ halibut and sablefish. No small entity is subject to reporting requirements that are in addition to or different from the requirements that apply to all directly regulated entities.

No unique professional skills are needed for the vessel owners or operators to comply with the reporting and recordkeeping requirements associated with this proposed rule. Vessel owners or operators would request to be placed in the EM selection pool using ODDS, a tool already used by directly regulated small entities. If they choose to participate in the EM selection pool, vessel owners and operators would be required to assist with the installation of the EM system and conduct basic maintenance to ensure the EM equipment remains functional. Vessel operators would meet with an EM service technician to develop a VMP for their vessel, in which the operator's responsibilities will be clearly defined. These responsibilities can generally be fulfilled by a crewmember of the vessel who already is fulfilling similar functions during fishing activity. The vessel owner or operator would be required to submit the VMP to NMFS for approval.

Vessel owners or operators in the EM selection pool that choose to use the proposed exemption in § 679.7(f)(4) would need to notify NMFS using ODDS when they intend to fish in multiple areas and commit to using a functioning EM system on the whole trip, even if the vessel was not selected for EM coverage. The vessel owner or operator would be required to meet all

of the same responsibilities as if the vessel had been selected for EM system coverage for that trip in ODDS. Because the EM system in this instance would be used as a compliance monitoring tool, some additional requirements would apply. If an EM system malfunction occurs during a fishing trip in a manner that does not allow essential information about where the vessel was fishing and what amount of IFQ or CDQ catch was coming aboard to be recorded, the vessel operator would be required to cease fishing immediately and to contact NOAA OLE. Information about the locations fished and the amount caught in each area is paramount to allowing vessels to fish in multiple areas using this exception; therefore, such a requirement is necessary.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this proposed action and existing Federal rules has been identified.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

No significant alternatives were identified that would accomplish the stated objectives, are consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. The Council and NMFS considered three alternatives. Alternative 1, the no action alternative, would not allow vessels to use an EM system instead of an observer. Alternative 2 would allow the use of EM for catch estimation on vessels in the EM selection pool and allow EM as a monitoring tool when fishing IFQ in multiple areas. Alternative 3 would allow the use of EM for compliance monitoring of vessel operator logbooks used for catch estimation.

The preferred alternative, Alternative 2, was designed to minimize the impacts to small entities from the status quo requirement to carry an observer when selected under the partial coverage category. Alternative 2 provides vessels that meet specific criteria the choice to join the EM selection pool instead of observer selection. Vessels in the EM selection pool would be required to use EM when randomly selected. Relative to Alternative 1 (no action), Alternative 2 provides nontrawl gear catcher vessel operators with the opportunity to participate in fishery monitoring and comply with the Observer Program regulations without carrying a human observer. Alternative 2 could also open new avenues to improve fishery data by collecting at-sea discard information from vessels less than 40 ft LOA, which is not currently gathered.

This proposed rule would not increase the fees that NMFS collects from directly regulated entities. The Analysis prepared for this action identifies the operational costs of participating in the EM program (see **ADDRESSES**). Directly regulated small entities that individually judge the operational costs of participating in the EM program to be burdensome could continue fishing under the existing human observer selection protocols, with no change in the amount of fees that they would be assessed.

Relative to Alternative 2, Alternative 3 would increase recordkeeping burdens on small entities by requiring skippers to fill out catch logbooks while operating their vessels and could also necessitate expanded dockside monitoring to verify logbooks, which could slow down shoreside operations and potentially increase overall costs at the programmatic level.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. These requirements have been submitted to OMB for approval under OMB control number 0648–0318 (North Pacific Observer Program). The public reporting burden for the collection-of-information requirements in this proposed rule includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The proposed rule would allow vessel owners or operators to use the existing ODDS to submit a request to be placed in the EM selection pool. In addition, the proposed rule would allow vessel owners or operators in the EM selection pool to submit a request to be removed from the EM selection pool. Public reporting burden per response for these new options in ODDS is estimated to average 5 minutes. If NMFS denies a request to place a vessel in the EM selection pool, the vessel owner may submit an administrative appeal to NMFS. Public reporting burden per response for an administrative appeal is estimated to average 4 hours.

The proposed rule would require all vessel owners and operators in the EM selection pool to register a fishing trip in ODDS. Public reporting burden per response to register a fishing trip in ODDS if a vessel is assigned to the EM selection pool is estimated to average 15 minutes.

The proposed rule would require vessels owners who request to be placed in the EM selection pool to submit a VMP to NMFS. Public reporting burden per response for the VMP is estimated to average 48 hours.

The proposed rule would require all vessel owners and operators in the EM selection pool to close the fishing trip in ODDS. Public reporting burden per response to close a fishing trip in ODDS is estimated to average 5 minutes.

The proposed rule also would require vessel owners selected to carry EM to submit video data storage devices and associated documentation to the EM data reviewer within 2 business days of the end of the fishing trip. Public reporting burden per response is estimated to average 1 hour.

Vessel owners or operators wanting to use EM to fish under the proposed exception in § 679.7(f)(4) would be required to notify NMFS through ODDS. Public reporting burden per response to register a fishing trip in ODDS is estimated to average 15 minutes. The addition of the option to indicate that the vessel will to use EM to fish under the exception in § 679.7(f)(4) during an upcoming fishing trip is not expected to increase the average response time to register a trip in ODDS.

Public comment is sought regarding (1) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the burden estimate; (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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region at the **ADDRESSES** above, email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–5806.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 17, 2017.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.2:

■ a. In the definition of ''Fishing trip,'' revise paragraph (3) heading and add paragraph (3)(iv); and

■ b. Add the definitions for ''Electronic Monitoring system or EM system,'' ''EM selection pool'', ''EM service provider,'' and ''Vessel Monitoring Plan (VMP)'' in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Electronic Monitoring system or EM system means a network of equipment that uses a software operating system connected to one or more technology components, including, but not limited to, cameras and recording devices to collect data on catch and vessel operations.

EM selection pool means the defined group of vessels from which NMFS will randomly select the vessels required to use an EM system under § 679.51(f).

EM service provider means any person, including their employees or agents, that NMFS contracts with to provide EM services, or to review, interpret, or analyze EM data, as required under § 679.51(f).

* * * * *

Fishing trip means: * * *

* * * * *

(3) *North Pacific Observer Program.*

* * * * *

(iv) *For a vessel in the EM selection pool of the partial coverage category,* the period of time that begins when the vessel leaves a shore-based port with an empty hold until the vessel returns to a shore-based port, regardless of when or where caught fish were offloaded.

* * * * *

Vessel Monitoring Plan (VMP) means the document that describes how fishing operations on the vessel will be conducted and how the EM system and associated equipment will be configured to meet the data collection objectives and purpose of the EM program. VMPs are required under § 679.51(f).

* * * * *

■ 3. In § 679.7, revise paragraphs (f)(4), (g) heading, and (j) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(f) * * *

(4) Except as provided in § 679.40(d), retain IFQ or CDQ halibut or IFQ or CDQ sablefish on a vessel in excess of the total amount of unharvested IFQ or CDQ, applicable to the vessel category and IFQ or CDQ regulatory area(s) in which the vessel is deploying fixed gear, and that is currently held by all IFQ or CDQ permit holders aboard the vessel, unless the vessel has an observer aboard under subpart E of this part or the vessel participates in the EM selection pool and complies with the requirements at § 679.51(f), and maintains the applicable daily fishing log prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title and § 679.5.

* * * * *

(g) *North Pacific Observer Program—Observers.* * * *

* * * * *

(j) *North Pacific Observer Program—EM Systems.* (1) Fish without an EM system when a vessel is required to carry an EM system under § 679.51(f).

(2) Fish with an EM system without a copy of a valid NMFS-approved VMP on board.

(3) Fail to comply with a NMFS-approved VMP.

(4) Fail to conduct a function test prior to departing port on a fishing trip as required at § 679.51(f)(5)(vi)(A).

(5) Depart on a fishing trip selected for EM coverage without a functional EM system, unless procedures at § 679.51(f)(5)(vi)(A)(*1*) and § 679.51(f)(5)(vi)(A)(*2*) have been followed.

(6) Fail to follow procedures at § 679.51(f)(5)(vi)(B) prior to each set on a fishing trip selected for EM coverage.

(7) Fail to make the EM system, associated equipment, logbooks and other records available for inspection upon request by NMFS, OLE, or other NMFS-authorized officer.

(8) Fail to submit a video data storage device as specified under § 679.51(f)(5)(vii).

(9) Tamper with, bias, disconnect, damage, destroy, alter, or in any other way distort, render useless, inoperative, ineffective, or inaccurate any component of the EM system, associated equipment, or data recorded by the EM system.

(10) Assault, impede, intimidate, harass, sexually harass, bribe, or interfere with an EM service provider.

(11) Interfere or bias the sampling procedure employed in the EM selection pool including either mechanically or manually sorting or discarding catch outside of the camera view or inconsistent with the NMFS-approved VMP.

(12) Fail to meet vessel owner and operator responsibilities specified at § 679.51 (f)(5).

* * * * *

■ 4. In § 679.21, revise paragraphs (a)(2)(ii) and (a)(3) to read as follows:

§ 679.21 Prohibited species bycatch management.

(a) * * *

(2) * * *

(ii) After allowing for sampling by an observer, if an observer is aboard, sort its catch immediately after retrieval of the gear and, except for salmon prohibited species catch in the BS pollock fisheries and GOA groundfish fisheries under paragraph (f) or (h) of this section, or any prohibited species catch as provided (in permits issued) under the PSD program at § 679.26, return all prohibited species, or parts thereof, to the sea immediately, with a minimum of injury, regardless of its condition.

(3) *Rebuttable presumption.* Except as provided under paragraphs (f) and (h) of this section and § 679.26, there will be a rebuttable presumption that any prohibited species retained on board a fishing vessel regulated under this part was caught and retained in violation of this section.

* * * * *

§ 679.23 [Amended]

■ 5. In § 679.23 remove paragraphs (d)(4) and (d)(5).

■ 6. In § 679.51:

■ a. Revise section heading and paragraphs (a)(1) heading, (a)(1)(i) introductory text, (a)(1)(i)(C), (a)(1)(ii) introductory text, (a)(1)(ii)(B), (a)(1)(ii)(D), and (a)(4)(iii); and

■ b. Add paragraph (f) to read as follows:

§ 679.51 Observer and Electronic Monitoring System requirements for vessels and plants.

(a) * * *

(1) *Groundfish and halibut fishery partial coverage category*—(i) *Vessel classes in partial coverage category.* Unless otherwise specified in paragraph (a)(2) of this section, the following catcher vessels and catcher/processors are in the partial coverage category when fishing for halibut with hook-and-line gear or when directed fishing for groundfish in a federally managed or parallel groundfish fishery, as defined at § 679.2:

* * * * *

(C) A catcher/processor placed in the partial coverage category under paragraph (a)(3) of this section; or

* * * * *

(ii) *Registration and notification of observer deployment.* The Observer Declare and Deploy System (ODDS) is the communication platform for the partial coverage category by which NMFS receives information about fishing plans subject to randomized observer deployment. Vessel operators provide fishing plan and contact information to NMFS and receive instructions through ODDS for coordinating with an observer provider for any required observer coverage. Access to ODDS is available through the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

* * * * *

(B) *Notification.* Upon entry into ODDS, NMFS will notify the owner or operator of his or her vessel's selection pool. Owners and operators must comply with all further instructions set forth by ODDS.

* * * * *

(D) *Vessel selection pool.* A vessel selected for observer coverage is required to have an observer on board for all groundfish and halibut fishing trips specified at paragraph (a)(1)(i) of this section for the time period indicated by ODDS.

* * * * *

(4) * * *

(iii) *Deadline to request full observer coverage.* A full observer coverage request must be submitted by October 15 of the year prior to the calendar year in which the catcher vessel would be placed in the full observer coverage category.

* * * * *

(f) *Electronic monitoring system requirements for vessels that use nontrawl gear*—Vessels that use nontrawl gear in the partial coverage category in paragraph (a)(1)(i) of this section may be eligible for EM coverage instead of observer coverage.

(1) *Vessel placement in the EM selection pool*—(i) *Applicability.* The owner or operator of a vessel that uses nontrawl gear in the partial coverage category under paragraph (a)(1)(i) of this section may request to be placed in the EM selection pool.

(ii) *How to request placement in the EM selection pool.* A vessel owner or operator must complete an EM request and submit it to NMFS using ODDS. Access to ODDS is available through the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* ODDS is described in paragraph (a)(1)(ii) of this section.

(iii) *Deadline to submit an EM request.* A vessel owner or operator must submit an EM request in ODDS by November 1 of the year prior to the calendar year in which the catcher vessel would be placed in the EM selection pool.

(iv) *Approval for placement in the EM selection pool.* NMFS will approve a nontrawl gear vessel for placement in the EM selection pool based on criteria specified in NMFS' Annual Deployment Plan, available through the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Criteria may include, but are not limited to, availability of EM systems, vessel gear type, vessel length, area fished, number of trips or total catch, sector, target fishery, and home or landing port.

(v) *Notification of approval for placement in the EM selection pool*—(A) NMFS will notify the vessel owner or operator through ODDS of approval for the EM selection pool for the next calendar year. The vessel remains subject to observer coverage under paragraph (a)(1)(i) of this section unless NMFS approves the request for placement of the vessel in the EM selection pool.

(B) Once the vessel owner or operator receives notification of approval from NMFS, the vessel owner or operator must comply with the vessel owner or operator responsibilities in paragraphs (f)(4) and (f)(5) of this section and all further instructions set forth by ODDS.

(vi) *Initial Administrative Determination (IAD).* If NMFS denies a request to place a vessel in the EM selection pool, NMFS will provide an IAD to the vessel owner, which will explain the basis for the denial.

(vii) *Appeal.* If the vessel owner wishes to appeal NMFS' denial of a request to place the vessel in the EM selection pool, the owner may appeal the determination under the appeals procedure set out at 15 CFR part 906.

(viii) *Duration.* Once NMFS approves a vessel for the EM selection pool, that vessel will remain in the EM selection pool until—

(A) NMFS disapproves the VMP under paragraph (f)(4) of this section;

(B) The vessel owner or operator notifies NMFS that the vessel intends to leave the EM selection pool in the following fishing year under paragraph (f)(1)(ix) of this section; or

(C) The vessel no longer meets the EM selection pool criteria specified by NMFS.

(ix) *How to leave the EM selection pool.* A vessel owner must complete a request to leave the EM selection pool and submit it to NMFS using ODDS. ODDS is described in paragraph (a)(1)(ii) of this section.

(x) *Deadline to submit a request to leave the EM selection pool.* A vessel owner or operator must submit a request to leave the EM selection pool by November 1 of the year prior to the calendar year in which the vessel would be placed in observer coverage.

(2) *Notification of EM selection*—(i) A minimum of 72 hours prior to embarking on each fishing trip, the operator of a vessel in the EM selection pool with a NMFS-approved VMP must register the anticipated trip with ODDS.

(ii) ODDS will notify the vessel operator whether the trip is selected for EM coverage and provide a receipt number corresponding to this notification. Trip registration is complete when the vessel operator receives the receipt number.

(iii) An operator may embark on a fishing trip registered with ODDS:

(A) *Not selected trip.* At any time if ODDS indicates that the fishing trip is not selected for EM coverage.

(B) *Selected trip.* After the vessel operator follows the instructions in ODDS and complies with the responsibilities under paragraphs (f)(4) and (f)(5) of this section, if ODDS indicates that the fishing trip is selected for EM coverage.

(3) *EM coverage duration.* If selected, a vessel is required to use the EM system for the entire fishing trip.

(i) A fishing trip selected for EM coverage may not begin until all previously harvested fish have been offloaded.

(ii) Within 24 hours of the end of the fishing trip selected for EM coverage, the vessel operator must use ODDS to close the fishing trip and follow the instructions in ODDS for submitting the video data storage devices and associated documentation as outlined in paragraph (5)(vii) of this section.

(4) *Vessel Monitoring Plan (VMP).* Once approved for the EM selection pool and prior to registering a fishing trip in ODDS under paragraph (f)(2) of this section, the vessel owner or operator must develop a VMP with the EM service provider following the VMP template available through the NMFS Alaska Region Web site at *https://alaskafisheries.noaa.gov/.*

(i) The vessel owner or operator must sign and submit the VMP to NMFS each calendar year.

(ii) NMFS will approve the VMP for the calendar year if it meets all the requirements specified in the VMP template available through the NMFS Alaska Region Web site *https://alaskafisheries.noaa.gov/.*

(iii) If the VMP does not meet all the requirements specified in the VMP template, NMFS will provide the vessel owner or operator the opportunity to submit a revised VMP that meets all the

requirements specified in the VMP template.

(iv) If NMFS does not approve the revised VMP, NMFS will issue an IAD to the vessel owner or operator that will explain the basis for the disapproval. The vessel owner or operator may file an administrative appeal under the administrative appeals procedures set out at 15 CFR part 906.

(v) If changes are required to the VMP to improve the data collection of the EM system or address fishing operation changes, the vessel owner or operator must work with NMFS and the EM service provider to alter the VMP. The vessel owner or operator must sign the updated VMP and submit these changes to the VMP to NMFS prior to departing on the next fishing trip selected for EM coverage.

(5) *Vessel owner or operator responsibilities.* To use an EM system under this section, the vessel owner or operator must:

(i) Make the vessel available for the installation of EM equipment by an EM service provider.

(ii) Provide access to the vessel's systems and reasonable assistance to the EM service provider.

(iii) Maintain a copy of a NMFS-approved VMP aboard the vessel at all times when the vessel is fishing.

(iv) Comply with all elements of the VMP when selected for EM coverage in ODDS.

(v) Maintain the EM system, including the following:

(A) Ensure power is maintained to the EM system at all times when the vessel is underway.

(B) Ensure the system is functioning for the entire fishing trip and that camera views are unobstructed and clear in quality and catch and discards may be completely viewed, identified, and quantified.

(C) Ensure EM system components are not tampered with, disabled, destroyed, or operated or maintained improperly.

(vi) Complete pre-departure function test and daily verification of EM system.

(A) Prior to departing port, the vessel operator must conduct a system function test following the instructions from the EM service provider. The vessel operator must verify that the EM system has adequate memory to record the entire fishing trip.

(*1*) If the EM system function test detects a malfunction identified as a high priority in the vessel's VMP or does not allow the data collection objectives to be achieved, the vessel must remain in port for up to 72 hours to allow an EM service provider time to conduct repairs. If the repairs cannot be completed within the 72-hour time frame, the vessel is released from EM coverage for that fishing trip and may depart on the scheduled fishing trip. A malfunction must be repaired prior to departing on a subsequent fishing trip. The vessel will automatically be selected for EM coverage for the subsequent fishing trip after the malfunction has been repaired.

(*2*) If the EM system function test detects a malfunction identified as a low priority in the vessel's VMP, the vessel operator may depart on the scheduled fishing trip following the procedures for low priority malfunctions described in the vessel's VMP. At the end of the trip the vessel operator must work with the EM service provider to repair the malfunction. The vessel operator may not depart on another fishing trip selected for EM coverage with this system malfunction unless the vessel operator has contacted the EM service provider.

(B) During a fishing trip selected for EM coverage, before each set is retrieved the vessel operator must verify all cameras are recording and all sensors and other required EM system components are functioning as instructed in the vessel's VMP.

(*1*) If a malfunction is detected, prior to retrieving the set the vessel operator must attempt to correct the problem using the instructions in the vessel's VMP.

(*2*) If the malfunction cannot be repaired at sea, the vessel operator must notify the EM service provider of the malfunction at the end of the fishing trip. The malfunction must be repaired prior to departing on a subsequent fishing trip selected for EM coverage.

(vii) When instructed by ODDS after closing a fishing trip selected for EM coverage, the vessel operator must submit video data storage devices and associated documentation identified in the vessel's VMP to NMFS using a method that requires a signature for delivery and provides a return receipt or delivery notification to the sender. The video data storage devices and associated documentation described in the vessel's VMP must be postmarked no later than 2 business days after the end of the fishing trip.

(viii) Make the EM system and associated equipment available for inspection upon request by OLE, a NMFS-authorized officer, or other NMFS-authorized personnel.

(6) *EM for fishing in multiple regulatory areas.* If a vessel owner or operator intends to fish in multiple regulatory areas using an EM system under the exception provided at § 679.7(f)(4), the vessel owner or operator must:

(i) Meet the requirements described in paragraph (f) of this section.

(ii) Register in ODDS that he or she intends to fish in multiple regulatory areas using the exception in § 679.7(f)(4).

(iii) Ensure the EM system is powered continuously during the fishing trip. If the EM system is powered down during periods of non-fishing, the VMP must describe alternate methods to ensure location information about the vessel is available for the entire fishing trip, as specified in the VMP template available through the NMFS Alaska Region Web site *https://alaskafisheries.noaa.gov/.*

(iv) If an EM system malfunction occurs during a fishing trip that does not allow the recording of retrieval location information and imagery of catch as described in the vessel's VMP, the vessel operator must cease fishing and contact OLE immediately.

[FR Doc. 2017–05753 Filed 3–22–17; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 82, No. 55
Thursday, March 23, 2017

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

Agricultural Marketing Service

[Document Number AMS–SC–17–0019]

Fruit and Vegetable Industry Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Agricultural Marketing Service (AMS) is announcing a meeting of the Fruit and Vegetable Industry Advisory Committee (Committee). The meeting is being convened to examine the full spectrum of fruit and vegetable industry issues and provide recommendations and ideas to the Secretary of Agriculture on how the U.S. Department of Agriculture (USDA) can tailor programs and services to better meet the needs of the U.S. produce industry. The meeting is open to the public. This notice sets forth the schedule and location for the meeting.

DATES: Tuesday, May 9, 2017, from 8:30 a.m. to 5:00 p.m. Eastern Time, and Wednesday, May 10, 2017, from 8:30 a.m. to 1:00 p.m., Eastern Time.

ADDRESSES: The Committee meeting will be held in the Potomac Rooms V and VI on the Ballroom Level at the Hyatt Regency Crystal City Hotel, 2799 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Marlene Betts, USDA, AMS, Specialty Crops Program; Telephone: (202) 720–5057; Email: *Marlene.Betts@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), the Secretary of Agriculture (Secretary) established the Committee in 2001 to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. The committee was re-chartered in July 2015 for a two-year period.

The AMS Deputy Administrator for the Specialty Crops Program serves as the Committee's Executive Secretary, leading the effort to administer the Committee's activities. Representatives from USDA mission areas and other government agencies affecting the fruit and vegetable industry are periodically called upon to participate in the Committee's meetings as determined by the Committee. AMS is giving notice of the Committee meeting to the public so that they may attend and present their views. The meeting is open to the public.

Public Comments: All written public comments must be submitted electronically by April 14, 2017, for the Committee's consideration to Marlene Betts at *marlene.betts@ams.usda.gov* or to *www.regulations.gov* or mailed to 1400 Independence Avenue SW., Room 2077-South, STOP 0235, Washington, DC 20250–0235. The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting.

Agenda items may include, but are not limited to, welcome and introductions, administrative matters, progress reports from committee working groups chairs and/or vice chairs, potential working group recommendations discussion and proposal, and presentations by subject matter experts as requested by the Committee.

Meeting Accommodations: The Hyatt Regency Crystal City is ADA complaint and provides reasonable accommodations to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this public meeting, please notify Marlene Betts at *marlene.betts@ams.usda.gov* or (202) 720–5057, by April 14, 2017. Determinations for reasonable accommodations will be made on a case-by-case basis.

Dated: March 20, 2017.

Bruce Summers,

Acting Administrator.

[FR Doc. 2017–05785 Filed 3–22–17; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lee Canyon Ski Area Master Development Plan Phase I Environmental Impact Statement. Humboldt-Toiyabe National Forest, Spring Mountains National Recreation Area, Clark County, Nevada

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service has received a proposal from Lee Canyon ski area to implement the first phase of their accepted master development plan (MDP). Lee Canyon is a mountain resort located 30 miles northwest of Las Vegas, Nevada, in the Spring Mountains National Recreation Area (SMNRA). The MDP is a multi-year plan for improvement and expansion of facilities at the ski area, which operates under a Forest Service special use permit. The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the potential environmental consequences of authorizing Lee Canyon to implement the first phase of the MDP, which would include updating existing facilities and developing new winter and summer recreation opportunities within the existing ski area permit boundary. Construction would begin soon after the signing of the record of decision (ROD), and would be completed within 5 years.

DATES: Comments concerning the scope of the analysis must be received in writing within 45 days following the publication of this notice of intent in the **Federal Register**. The draft EIS (DEIS) is expected in January 2018 and the final EIS (FEIS) is expected in October 2018. A public open house is proposed for January 2018 during the formal comment period for the DEIS shortly following release of the DEIS.

ADDRESSES: Electronic comments are encouraged. Send comments to *leecanyoneis@fs.fed.us.* Mail written comments to Donn Christiansen, Area Manager, Spring Mountains National Recreation Area, 701 N. Torrey Pines Dr., Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: For additional information concerning this project, please contact Chris Linehan, Interdisciplinary Team Leader, at 702–515–5401 or *clinehan@fs.fed.us.*

Information about this EIS will be posted on the internet at: *https://www.fs.usda.gov/project/?project=50649.*

This Web site will be used to post all public documents during the environmental review process and announce opportunities for public participation and comment.

SUPPLEMENTARY INFORMATION: This notice of intent initiates the scoping process, which guides the development of the EIS. The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies, American Indian Tribes, as well as other individuals and organizations that may be interested in or affected by the proposed project. Comments on the proposed project should be in writing and should be specific to the proposed action, describing as clearly and completely as possible any issues or concerns the commenter has with the proposal. Comments received, including the names and addresses of those who comment, will become part of the public record for this EIS and will be available on request for public inspection (see *40 CFR 1501.7* and *1508.22; Forest Service Handbook* 1909.15, Section 21).

Purpose and Need for Action: Two factors underlie the purpose and need for action at Lee Canyon: The length of time since the resort's facilities have been upgraded and emerging trends in winter recreation.

In 1962, the Forest Service issued the first special use permit for Lee Canyon ski area to the Clark County Board of Commissioners, establishing one the older ski areas in the West with two rope tows, a cable ski sled, and a warming hut operated by the Las Vegas Ski Club. Over the next 20 years, ownership changed and the existing Chair 1 (Sherwood) lift and lifts in the approximate locations of Chairs 2 and 3 (Bluebird and Rabbit Peak) were constructed. The existing base area structures were also built and expanded during this time period. Powdr Corp. acquired an ownership interest in Lee Canyon in 2004. Since that time Chairs 2 and 3 were replaced and the snowmaking reservoir was built, but the overall character of the resort remains dated.

In May of 2011, Lee Canyon submitted a MDP to the Forest Service with the goals of modernizing the ski area and developing underutilized portions of the permit area. The Forest Service accepted the MDP in June of 2011.

Extensive customer surveys conducted by Lee Canyon and other resorts indicate that visitors are increasingly seeking a more diverse range of recreational activities, particularly for families, that includes year-round opportunities and more adventurous options. The Forest Service response to this trend includes our 2012 introduction of the *Framework for Sustainable Recreation,* which sets goals for providing a diverse array of recreational opportunities aimed at connecting people with the outdoors and promoting healthy lifestyles, in partnership with other public and private recreation providers.

Also, passage of the *Ski Area Recreational Opportunity Enhancement Act of 2011* provides direction on the types of summer activities the Forest Service should consider authorizing to round out the range of opportunities provided to the public at permitted mountain resorts. Reflecting these developments, the purpose and need for the proposed action is to:

- Update and renovate ski area infrastructure, particularly run-down base facilities, to meet current standards and the expectations of today's recreation market.
- Improve balance on several levels: Between lift and run capacity, between on-mountain and base-area capacity, and between overall ski area capacity and growing recreational demand from Las Vegas and the surrounding area.
- Develop year-round recreational opportunities to meet increasing demand by recreationists of various types and skill levels.

Proposed Action: The Forest proposes to authorize Lee Canyon to implement the first phase of the ski area's accepted MDP. The development of the first phase of the MDP is the result of a collaborative, multi-year process involving input from Lee Canyon ski area, the Forest Service, and the U.S. Fish and Wildlife Service. All elements of the proposed action fall within the permitted boundaries of the Lee Canyon ski area. If authorized, it is anticipated that the elements described below would be implemented within 5 years of authorization. The first phase of the MDP includes:

Lift 4: Lift 4 would be designed for first-time skiers, providing them the opportunity to get a feel for being on skis or boards, riding a lift, and sliding on a very mild grade—a ''bunny hill.'' It would be a moving carpet lift about 450 feet long, with a vertical rise of 80 feet, running the length of the beginner slope, along the skier's left edge. It would be installed on a raised berm on ties or concrete blocks.

Chair 5: The Chair 5 pod (*i.e.,* lift and associated ski runs) would be the next step up from the bunny hill, providing beginners and low intermediate skiers the opportunity to transition to a chairlift and ski a variety of longer ''green'' runs. Chair 5 would be a 1,800 person-per-hour (pph) fixed-grip quad chairlift with a loading conveyor. The lift would be 1,275 feet long, with a vertical rise of 310 feet.

New ski runs in this pod would incorporate design features to make them less visually striking, including feathered edges, tree islands, and strategic placement to make them less visible from sensitive viewpoints. Traverses would be cut to provide access to the lower terminal and to the lower terminals of Chairs 1 and 2 as well as the base area.

Chair 8: Similar to existing Chair 2, Chair 8 would be a step up in difficulty from Chair 5, accessing mostly intermediate runs with some easier and some more difficult terrain within that category. It would be a fixed-grip quad chairlift with a capacity of 1,800 pph, 2,200 feet long, with a vertical rise of 650 feet.

Skiers would use Chair 2 to access the Chair 8 pod. The conceptual ski runs in this pod were adjusted to minimize visual impact, as discussed above for Chair 5.

Tree and Glade Skiing: Three areas with the potential for tree skiing have been identified. The first, a parcel of about 5.5 acres, is a tree island between Keno and Blackjack runs, in the Chair 1 pod. The second, about 16 acres, lies above the snow-making reservoir, accessed from Chairs 1 and 2. The third, about 12 acres, is in the lower portion of the Chair 8 pod, with access from that lift.

The intent of these glading projects is to open up areas that are currently too densely forested for most skiers to navigate comfortably. Smaller trees, infirm or damaged trees, and white fir trees would be the priorities for removal. Work would be done by hand or, in some areas, using equipment such as feller-bunchers.

Snowmaking Coverage: Expanding the snowmaking system would provide the option to use available water to make snow where it was most needed. This proposal entails expanding coverage to several existing runs in the Chair 1 and Chair 2 pods initially, then to all primary runs in the Chair 5 pod and two main runs in Chair 8 pod when those pods are developed. The amount of water available is a factor determining the pace of snowmaking expansion, and the 2010 expansion of the snowmaking pond created new options.

The infrastructure necessary to complete this system expansion

includes buried water and electric lines, surface hydrants to connect snowmaking guns, and an additional pump house (roughly 600 square feet) when snowmaking in the Chair 8 pod is developed.

Mountain Coaster: Mountain coasters are a relatively new type of recreation at mountain resorts, used primarily during the summer but popular during winter as well where conditions allow. Gravity-powered cars holding individual riders or pairs travel on a dual-rail track. They start at a loading/unloading terminal at the bottom, are pulled up to the top of the circuit on a straight uphill segment, and then are released onto a downhill segment with turns, climbs, and dips. The track averages 4 to 6 feet above ground level but peaks can be up to 20 feet high. The coasters are quiet. They are not an amusement park-style development but a recreational amenity developed specifically to provide an exhilarating experience in the mountain environment, and that environment is central to their concept and popularity.

This mountain coaster would be installed west of the base area. The top of the circuit would be near the summit of the 9,270-foot peak above the Bristlecone Trail, and the downhill track would run down the slope to the southeast. The loading/unloading terminal would be in the mid-mountain area. The mountain coaster would pass over trails and sensitive habitat with bridge spans so collisions with trail users or impacts to sensitive plant and animal habitats could be avoided.

Mountain Bike Trails: Mountain biking has increased steadily in popularity for a number of years, and it was one of the first summer activities authorized at ski areas on National Forest System land. While mountain biking is allowed on the SMNRA's Bristlecone Trail, including the portion passing through the ski area, the Lee Canyon ski area has offered no dedicated mountain bike facilities to date. This proposal includes construction of a 13-mile system including cross-country-type trails of various difficulty levels and one expert-level downhill-type trail.

All trails, with the exception of the dual-use trail described in the next section, would be restricted to downhill traffic. Cross-country trails are intended to be ridden on a cross-country, or XC-style, mountain bike. Downhill trails are intended to be ridden on a downhill style mountain bike. In terms of construction, the downhill trail would be wider and would include technical features (*i.e.,* jumps, bridges, seesaws, etc.) built of earth, rock, or wood. Average width of cross-country trails would be 2 feet, while the downhill trail would average 4 feet.

Uphill access for lift-served mountain biking would be via Chair 2. There would be 4 miles of easier trails, 6.25 miles of intermediate trails, 1.75 miles of advanced trails, and 1 mile of expert/downhill trail.

Hiking Trails: Hiking would be allowed on one of the mountain bike trails descending from the upper terminal of Chair 2 to the mid-mountain base area. Lift rides are popular with summer visitors, who subsequently make their own way down the mountain, often through sensitive habitat. This trail, coupled with interpretive signage identifying habitat areas and explaining the importance of staying on the trail, would reduce potential damage. The hiking/biking trail would be one of the easier-rated trails, and would be constructed with three times the width (6 feet wide) of other cross-country trails, thereby reducing collision hazards.

Zip Line: A zip line is a pulley and brake system on an inclined cable which allows the rider, suspended from the pulley in a harness, to traverse the length of the cable at a controllable speed. Zip lines provide an opportunity to experience the forest canopy while having an exciting ride at the same time. The proposed zip line would descend from a launch station in the upper portion of Chair 2 pod to a final landing station toward the bottom of the new Chair 5 pod. The entire experience would involve two segments of zip line with an interpretive trail between segments. This trail would be 200 to 300 feet long and would include signage featuring native flora and fauna. A similar interpretive trail would be constructed to bring riders from the landing back to the base area.

Installation would require a 30-foot corridor clear of trees, but much of the alignment would lie above treetop height, in natural openings, or along cleared ski trails. Only launch and landing towers would be required, as the cable between them would be a free, unsupported span. The four steel launch and landing towers would be up to 25 feet high, and the cable height would range up to 150 feet above the ground, depending on the ground contour.

Equipment Rental/Food & Beverage Building: This building would provide approximately 20,000 square-feet of floor space, split between two or possibly three levels. Specific functions would include ski and snowboard rental, food and beverage service, group/banquet space, restrooms, and storage. It would be designed and constructed to reflect a consistent architectural theme for the resort.

Skier Services Building: This building would provide approximately 4,000 square-feet of floor space on a lower level for restrooms and dining space. A second level would provide approximately 1,000 square feet of food and beverage space with outdoor deck seating on the remainder of the space. Due to the pressing need for the services it would provide, this building may be withdrawn from the Proposed Action and processed separately in the near future, but at this stage it remains part of the Proposed Action.

First Aid/Ski Patrol Building: This permanent structure would house key public safety and administrative functions at the lower base area. These would include ski patrol headquarters, first aid services, employee offices, and meeting space. It would comprise about 10,000 square feet on two levels. Power and water would be brought in from the existing maintenance building, and sewer lines would be installed in an existing utility corridor along Lift 4.

Vault Toilet Facility at Overflow Parking Lot: The overflow lot is roughly a 15-minute walk from the nearest restroom facilities. The addition of toilet facilities at the parking lot is necessary to improve the experience of both winter and summer visitors. The facility has been sited to avoid impacts on sensitive habitat adjacent to the parking area. It would be a simple, pre-cast structure, with men's and women's sides, installed on a 12-foot-by-20-foot pad.

New Parking Lot: Parking capacity at Lee Canyon ski area is not sufficient for projected peak-day conditions. This proposal addresses the shortfall primarily through development of a new parking lot below the beginner area. The 3.6-acre paved lot would accommodate about 500 cars, or 1,250 visitors at the industry standard of 2.5 per car. In combination with existing lots, this would accommodate the 3,000-person comfortable carrying capacity of the resort following this expansion.

A new, two-way access road, about 1,500 feet long with a 20-foot-wide, paved surface, would be developed from the existing overflow lot to the new lot. It would run along the western edge of the parking lot, with entries to the lot near the northwest corner and the southwest corner.

Gate House: A small (roughly 6 feet by 10 feet) gate house would be constructed between the in- and outbound lanes of the Lee Canyon ski area access road, at the site of the existing gate below the entrance to the overflow parking lot. The purpose of

this structure would be to control parking access and collect parking fees.

Water Tank: The ski area's current culinary water storage tank is insufficient in capacity and in need of replacement. A new 120,000-gallon steel, above-ground tank would be installed west of the snowmaking reservoir, in a grove of trees on the skier's left side of Snake ski run. This site is accessible, adjacent to in-place piping, and partially screened by vegetation. The existing concrete tank would be abandoned in place, as it is buried beneath occupied sensitive habitat on the Bimbo run.

Lead and Cooperating Agencies: The Forest Service will be the lead federal agency in accordance with *40 Code of Federal Regulations (CFR) 1501.5(b)* and is responsible for the preparation of the EIS. Scoping will determine if any cooperating agencies are needed.

Responsible Official: The Forest Service responsible official for this EIS is William A. Dunkelberger, Forest Supervisor, Humboldt-Toiyabe National Forest Supervisor's Office, 1200 Franklin Way, Sparks, Nevada 89431, phone (775) 355–5310.

Decision to Be Made: The responsible official will decide whether to authorize Lee Canyon to implement the action as proposed or modified, or to take no action. The responsible official will also decide what mitigation measures and monitoring will be required. A Forest Plan amendment may be required for one or more actions to be authorized (SMNRA GMP, Management Area 11.57 Standards and Guidelines, p. 11–35).

Preliminary Issues: Preliminary issues include potential effects on: watershed resources, special-status plant and animal species, heritage resources, and scenic integrity.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A DEIS will be prepared for comment. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or sections of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the DEIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at *40 CFR 1503.3* in addressing these points.

Dated: March 13, 2017.

William A. Dunkelberger,

Forest Supervisor.

[FR Doc. 2017–05754 Filed 3–22–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Chequamegon Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Chequamegon Resource Advisory Committee (RAC) will meet in Park Falls, Wisconsin. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_page?id=001t0000002JcwYAAS*.

DATES: The meeting will be held on Tuesday, April 4, 2017, at 10:00 a.m. (CST).

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Chequamegon National Forest Park Falls Office, 1170 4th Avenue South, Park Falls, Wisconsin.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Chequamegon-Nicolet National Forest Meford Office. Please call ahead at 715–748–4875 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Leesha Horward-McCauley, RAC Coordinator, by phone at 715–748–4875, or via email at *lmhowardmccauley@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and approve project submissions.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by March 10, 2017, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Leesha Howard-McCauley, RAC Coordinator, Medford-Park Fall Ranger District, 850 N. 8th, Hwy. 13, Medford, Wisconsin 54451; by email to *lmhowardmccauley@fs.fed.us,* or via facsimile to 715–748–5675.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: March 7, 2017.

Jeanne M. Higgins,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2017–05757 Filed 3–22–17; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meetings of the West Virginia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of monthly planning meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the West Virginia Advisory Committee (Committee) to the Commission will convene by conference call on Friday, April 7, 2017, at 12:00 p.m. (EST) on. The purpose of meetings are to continue discussing topics for civil rights project.

DATES: Friday, April 7, 2017 from 12:00 p.m. EST to 1:00 p.m. EST.

Public Call-in Information: Conference call-in number: 1–888–601–3861 and password: 636552.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–888–601–3861 and password: 636552. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

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

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://facadatabase.gov/committee/meetings.aspx?cid=281;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

I. Welcome and Introductions
—Rollcall
Planning Meeting
—Discuss Civil Rights Topics for Civil Rights Project
II. Other Business
III. Open Comment
IV. Adjournment

Dated: March 17, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–05745 Filed 3–22–17; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arkansas Advisory Committee To Discuss Civil Rights Topics 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 Arkansas Advisory Committee (Committee) will hold a meeting on Monday, April 3, 2017, at 12:00 noon CST for the purpose of a discussion on civil rights topics affecting the state.

DATES: The meeting will be held on Monday, April 3, 2017, at 12:00 noon. CST.

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

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–427–9415, conference ID: 6982990. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@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, Arkansas Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=236*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call
Civil Rights Topics in Arkansas
Future Plans and Actions
Public Comment
Adjournment

Dated: March 16, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–05560 Filed 3–22–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Survey of Construction, Questionnaire for the Building Permit Official.

OMB Control Number: 0607–0125.

Form Number(s): SOC–QBPO.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 1,017.

Average Hours per Response: 15 minutes.

Burden Hours: 254.

Needs and Uses: The U.S. Census Bureau is requesting a revision of the currently approved collection for the Survey of Construction Questionnaire

for the Building Permit Official (SOC–QBPO). The information collected on the SOC–QBPO is necessary to carry out the sampling for the Survey of Housing Starts, Sales and Completions (OMB number 0607–0110), also known as the Survey of Construction (SOC). Government agencies and private companies use statistics from the SOC to monitor and evaluate the large and dynamic housing construction industry.

The SOC–QBPO is an electronic questionnaire. The field representatives (FRs) either call or visit the respondents to enter their survey responses into a laptop computer using the Computer Assisted Personal Interviewing (CAPI) software formatted for the SOC–QBPO. We will continue to use the current CAPI questionnaire with modifications to the form for the purpose of improving the process of accurately classifying permitted units and to eliminate the collection of information deemed no longer necessary for the proper sample selection for the SOC. The overall length of the interview will not change. The sample size slightly increased due to the increase in total number of permit-issuing jurisdictions.

The Census Bureau FRs use the SOC–QBPO to obtain information on the operating procedures of a permit office. This enables them to locate, classify, list, and sample building permits for residential construction. These permits are used as the basis for the sample selected for SOC. The Census Bureau also uses the information to verify and update the geographic coverage of permit offices.

Failure to collect this information would make it difficult, if not impossible, to accurately classify and sample building permits for the SOC. Data for two principal economic indicators are produced from the SOC: New Residential Construction (housing starts and housing completions) and New Residential Sales. Government agencies use these statistics to evaluate economic policy, measure progress towards the national housing goal, make policy decisions, and formulate legislation. For example, the Board of Governors of the Federal Reserve System uses data from this survey to evaluate the effect of interest rates in this interest-rate sensitive area of the economy. The Bureau of Economic Analysis (BEA) uses the data in developing the Gross Domestic Product (GDP). The private sector and other data users from Department of Housing and Urban Development (HUD) and the National Association of Home Builders (NAHB) use the information for estimating the demand for housing, building materials and the many products used in new housing and to schedule production, distribution, and sales efforts. The financial community uses the data to estimate the demand for short-term (construction loans) and long-term (mortgages) borrowing.

Affected Public: State, local, or Tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 131 and 182.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2017–05774 Filed 3–22–17; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Annual Survey of Entrepreneurs.

OMB Control Number: 0607–0986.

Form Number(s): None, electronic collection.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 290,000.

Average Hours per Response: 35 minutes.

Burden Hours: 169,167.

Needs and Uses: In an effort to improve the timely measurement of business dynamics in the United States, the Census Bureau is conducting the Annual Survey of Entrepreneurs (ASE). The ASE provides annual data on the characteristics of businesses and business owners. The ASE is a supplement to the 5-year Survey of Business Owners (SBO). ASE estimates include the number of firms, sales/receipts, annual payroll, and employment by gender, ethnicity, race, and veteran status. The ASE is conducted jointly by the Ewing Marion Kauffman Foundation, the Minority Business Development Agency (MBDA), and the Census Bureau for three reference years (2014–2016).

This collection allows the Census Bureau to collaborate on the implementation of a key National Academies recommendation for improving the measurement of business dynamics in the U.S. economy, which recommended:

''The Census Bureau Survey of Business Owners (SBO) should be conducted on an annual basis. The survey should include both a longitudinal component and a flexible, modular design that allows survey content to change over time. In addition, the Census Bureau should explore the possibility of creating a public-use (anonymized) SBO or a restricted access version of the data file.''

—Lynch, Lisa M., John Haltiwanger, and Christopher Mackie, eds. Understanding Business Dynamics: An Integrated Data System for America's Future. National Academies Press, 2007.

The ASE includes all nonfarm employer businesses filing Internal Revenue Service (IRS) tax forms as individual proprietorships, partnerships, or any type of corporation, and with receipts of $1,000 or more. The ASE samples approximately 290,000 employer businesses. The sample is stratified by metropolitan statistical area (MSA), frame, and age of business. The Census Bureau selects large companies with certainty. These companies are selected based on volume of sales, payroll, or number of paid employees. All certainty cases are sure to be selected and represent only themselves.

The ASE has been conducted for survey years 2014 and 2015 and will continue for 2016 per the agreement between the Census Bureau and the survey sponsors. There are no final plans to conduct the ASE beyond survey year 2016. However, the Census Bureau is exploring options to maintain this collection for future survey years.

Content for the ASE includes questions from the 2012 SBO (form SBO–1) with additional questions on sources of capital and financial barriers that are asked each survey year. The ASE also includes a series of new questions each survey year based on a relevant business topic determined prior to data collection. Each year the new module of questions is submitted to the Office of Management and Budget (OMB) for approval. The Census Bureau is requesting approval to field the 2016 ASE. The module selected for the 2016 ASE focuses on business advice and

planning. The 2016 ASE also includes additional questions on business financing relationships, owner demographics, and regulations. The new content developed for 2016 is intermingled with the existing content. The module selected for the 2014 ASE focused on business innovation and research and development (R&D) activity. The goal of the 2014 module was to identify new forms of innovation, identify characteristics of businesses that are innovators, and measure R&D activity conducted by entrepreneurs. The module selected for the 2015 ASE focused on business management practices. The goal of the 2015 module was to measure how management practices impact productivity and growth.

The ASE collection is electronic only. Those selected for the survey receive an initial letter informing the respondents of their requirement to complete the survey as well as instructions on accessing the survey. The 2016 ASE initial mail is scheduled for June 2017. Responses will be due approximately 40 days from initial mail. Select respondents will receive a due date reminder approximately one week before responses are due.

Additionally, there will be two follow-up letter mailings to nonrespondents after the due date. Select nonrespondents will receive a certified mailing for the second follow-up if needed. Closeout of mail operations is scheduled for November 2017. Upon the close of the collection period, the response data will be processed, edited, reviewed, tabulated, and released publicly.

The survey will collect data on the gender, ethnicity, race, and veteran status for up to four persons owning the majority of rights, equity, or interest in the business. These data are needed to evaluate the extent and growth of business ownership by women, minorities, and veterans in order to provide a framework for assessing and directing federal, state, and local government programs designed to promote the activities of disadvantaged groups.

This data is widely used by private firms and individuals to evaluate their own businesses and markets. Additionally, the data will be used by entrepreneurs to write business plans and loan application letters, by the media for news stories, by researchers and academia for determining firm characteristics, and by the legal profession in evaluating the concentration of minority businesses in particular industries and/or geographic areas. The ASE statistics are used by government program officials, industry organization leaders, economic and social analysts, researchers, and business entrepreneurs. Additional examples of data use include:

- The Small Business Administration (SBA) and the Minority Business Development Agency (MBDA) to assess business assistance needs and allocate available program resources.
- Local government commissions on small and disadvantaged businesses to establish and evaluate contract procurement practices.
- Federal, state and local government agencies as a framework for planning, directing and assessing programs that promote the activities of disadvantaged groups.
- The National Women's Business Council to assess the state of women's business ownership for policymakers, researchers, and the public at large.
- Consultants and researchers to analyze long-term economic and demographic shifts, and differences in ownership and performance among geographic areas.
- Individual business owners to analyze their operations in comparison to similar firms, compute their market share, and assess their growth and future prospects.

Affected Public: Business and other for-profit; Not-for-profit institutions; State, local or Tribal governments.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 of the United States Code, Sections 8(b), 131, and 182 authorizes this collection. On behalf of the Secretary of Commerce, pursuant to Section 1(a)(3) of Executive Order 11625, the MBDA may enter into this agreement with the Census Bureau to establish a center for the development, collection, summation, and dissemination of information that will be helpful to persons and organizations throughout the nation in undertaking or promoting the establishment and successful operation of minority business enterprises.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2017–05775 Filed 3–22–17; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration.

Title: NTIA/FCC Web-based Frequency Coordination System.

OMB Control Number: 0660–0018.

Form Number(s): N/A.

Type of Request: Regular submission (extension of currently approved information collection).

Number of Respondents: 4000.

Average Hours per Response: 15 minutes.

Burden Hours: 1000.

Needs and Uses: NTIA hosts a Web-based system that collects specific identification information (*e.g.,* company name, location and projected range of the operation, etc.) from applicants seeking to operate in existing and planned radio frequency (RF) bands that are shared on a co-primary basis by federal and non-federal users. The Web-based system provides a means for non-federal applicants to rapidly determine the availability of RF spectrum in a specific location, or a need for detailed frequency coordination of a specific newly proposed assignment within the shared portions of the radio spectrum. The system helps expedite the coordination process for non-federal applicants while assuring protection of government data relating to national security.

Affected Public: Applicants seeking to operate in the 71–76 GHz, 81–86 GHz, and 92–95 GHz radio frequency bands.

Frequency: Once per applicant.

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.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2017–05776 Filed 3–22–17; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Renewal of Currently Approved Information Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of the Chief Information Officer, Office of the Secretary, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The purpose of this notice is to allow for 60 days of public comment.

DATES: Written comments must be submitted on or before May 22, 2017.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *PRAcomments@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jennifer Jessup at *PRAcomments@doc.gov* or by telephone (202) 482–3306.

SUPPLEMENTARY INFORMATION:

I. Abstract

Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that the Department of Commerce (DOC) programs are effective and meet our customers' needs we use a generic clearance process to collect qualitative feedback on our service delivery. This collection of information is necessary to enable DOC to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the programs. 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 DOC 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.

This request is an extension of the 'generic fast-track' process offered to all government agencies by OMB in 2010. Fast-track means each request receives approval five days after submission, if no issues are brought to DOC's attention by OMB within the five days.

II. Method of Collection

The primary method of collection will be the Internet (electronically), paper format, email, fax, interviews, etc.

III. Data

OMB Control Number: 0690–0030.

Form Number(s): Not applicable.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Individuals or Households, Businesses or for-profit organizations, State, Local or Tribal Government, etc.

Estimated Number of Respondents: 244,710.

Estimated Time per Response: 5 to 30 minutes for surveys; 1 to 2 hours for focus groups; 30 minutes to 1 hour for interviews.

Estimated Total of Burden Hours: 631, 334.

Estimated Total Cost to Public: $0.

Frequency of Requests: One-time.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice sill be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2017–05579 Filed 3–22–17; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–80–2016]

Foreign-Trade Zone (FTZ) 148—Knoxville, Tennessee; Authorization of Production Activity; CoLinx, LLC (Bearing Units); Crossville, Tennessee

On November 17, 2016, CoLinx, LLC submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facilities within FTZ 148—Sites 2, 6, 8 and 9, in Crossville, Tennessee.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 85206, November 25, 2016). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: March 20, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–05807 Filed 3–22–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–046]

Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: Final Affirmative Determination

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

SUMMARY: The Department of Commerce (Department) determines that

countervailable subsidies are being provided to producers and exporters of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from the People's Republic of China (PRC). The period of investigation is January 1, 2015, through December 31, 2015. For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

DATES: Effective March 23, 2017.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Matthew Renkey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone 202.482.2243 or 202.482.2312, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioner in this investigation is Compass Chemical International LLC (Petitioner). In addition to the Government of China (GOC), the mandatory respondents in this investigation are Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory (Wujin Water) and Shandong Taihe Water Treatment Technologies Co., Ltd. (Taihe Technologies). The Department has determined that Taihe Technologies is affiliated with Shandong Taihe Chemicals Co., Ltd. (Taihe Chemicals), a trading company, and will refer to them collectively as ''Taihe Companies.''

The Department published its *Preliminary Determination* on September 8, 2016.[1] On March 2, 2017, the Department issued a Post-Preliminary Analysis.[2] A complete summary of the events that occurred since the *Preliminary Determination,* as well as a full discussion of the issues raised by the parties for this final determination, may be found in the Issues and Decision Memorandum accompanying the Final Affirmative Determination,[3] which is dated concurrently with, and hereby adopted by, this notice. The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). Access to ACCESS is available to registered users at *https://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the Department's main building. In addition, a complete version of the Issues and Decision Memorandum can be viewed at *http://enforcement.trade.gov/frn.* The signed Issues and Decision Memorandum and the electronic version are identical in content.

Methodology

The Department is conducting this countervailing duty (CVD) investigation in accordance with section 701 of the Tariff Act of 1930, as amended (Act). For each of the subsidy programs found to be countervailable, we determine that there is a subsidy (*i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient) and that the subsidy is specific. For a full description of the methodology underlying our final determination, *see* the Issues and Decisions Memorandum.

Scope of the Investigation

The product covered by this investigation is HEDP from the PRC. For a complete description of the scope of this investigation, *see* Appendix II.

Analysis of Subsidy Programs and Comments Received

All issues raised in the comments filed by interested parties to this proceeding are discussed in the Issues and Decision Memorandum. A list of the issues raised by interested parties and responded to by the Department in the Issues and Decisions Memorandum are attached at Appendix I to this notice.

Use of Adverse Facts Available

For purposes of this final determination, we relied on facts available, and because certain respondents did not act to the best of their ability in responding to the Department's requests for information, we drew an adverse inference, where appropriate, in selecting from among the facts otherwise available.[4] A full discussion of our decision to rely on adverse facts available is presented in the ''Use of Facts Otherwise Available and Adverse Inferences'' section of the Issues and Decisions Memorandum.

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated an estimated individual countervailable subsidy rate for each producer/exporter of the subject merchandise individually investigated.

In accordance with section 705(c)(5)(A) of the Act, for companies not individually investigated, we applied an ''all-others'' rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as mandatory respondents by those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the all-others rate excludes zero and *de minimis* rates calculated for the exporters and producers individually investigated, as well as rates based entirely on facts otherwise available. In this investigation, the only non-*de minimis* rate, or rate not based entirely on facts otherwise available, is the rate calculated for the Taihe Companies. Consequently, the rate calculated for the Taihe Companies is assigned as the ''all others'' rate.

Company	Subsidy rate (percent *ad valorem*)
Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory (Wujin Water)	0.75 (*de minimis*)
Shandong Taihe Chemicals Co., Ltd. and Shandong Taihe Water Treatment Technologies Co., Ltd. (Taihe Companies)	2.40
All-Others	2.40
* Changzhou Kewei Fine Chemicals Co., Ltd	54.11
* Hebei Longke Water Treatment Co., Ltd	54.11

[1] *See Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Preliminary Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 81 FR 62084 (September 8, 2016) (*Preliminary Determination*).

[2] *See* Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Post-Preliminary Analysis Memorandum, dated March 2, 2017 (Post-Preliminary Analysis).

[3] *See* Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Issues and Decision Memorandum for the Final Affirmative Determination,'' dated concurrently with this notice (Issues and Decisions Memorandum).

[4] *See* sections 776(a) and (b) of the Act.

Company	Subsidy rate (percent *ad valorem*)
* Shandong Huayou Chemistry Co., Ltd	54.11
* Shandong Xintai Water Treatment Technology	54.11
* Zaozhuang Fuxing Water Treatment Technology	54.11
* Zaozhuang YouBang Chemicals Co., Ltd	54.11
* Zouping Dongfang Chemical Industry Co., Ltd	54.11

* Non-cooperative company to which an adverse facts available rate is being applied. *See* ''Use of Facts Otherwise Available and Adverse Inferences'' section in the Issues and Decisions Memorandum.

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of HEDP from the PRC, that were entered, or withdrawn from warehouse, for consumption on or after September 8, 2016, the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after January 6, 2017, but to continue the suspension of liquidation of all entries from September 8, 2016, through January 5, 2017.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act, requiring a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or, alternatively, conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: March 20, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Scope Comments
V. Subsidy Valuation
VI. Benchmarks and Discount Rates
VII. Use of Facts Otherwise Available and Adverse Inferences
VIII. Analysis of Programs
IX. Analysis of Comments
Comment 1: Electricity for LTAR Calculation
Comment 2: Whether the Department Should Find Wujin Water To Be Cross-Owned With Nantong Uniphos
X. Recommendation

Appendix II

The merchandise covered by this investigation includes all grades of aqueous acidic (non-neutralized) concentrations of HEDP, also referred to as hydroxyethylidenendiphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The Chemical Abstract Service (CAS) registry number for HEDP is 2809–21–4.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2931.90.9043. It may also enter under HTSUS subheadings 281.19.6090 and 2931.90.9041. While HTSUS subheadings and the CAS registry number are provided for convenience and customs purposes only, the written description of the scope of this investigation is dispositive.

[FR Doc. 2017–05804 Filed 3–22–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–886]

Ferrovanadium From the Republic of Korea: Final Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (''the Department'') determines that imports of ferrovanadium from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value (''LTFV''). The final estimated weighted-average dumping margins of sales at LTFV are listed below in the section entitled ''Final Determination Dumping Margins.'' The period of investigation (''POI'') is January 1, 2015, through December 31, 2015.

DATES: Effective March 23, 2017.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Eli Lovely, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4081 or (202) 482–1593.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** the *Preliminary Determination* on November 1, 2016.[1] A summary of the events that have occurred since the Department published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is all ferrovanadium regardless of grade (*i.e.,* percentage of contained vanadium), chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium. Ferrovanadium is classified under Harmonized Tariff Schedule of the United States (''HTSUS'') item number 7202.92.0000. Although this HTSUS item number is provided for convenience and Customs purposes, the written description of the scope of the investigation is dispositive.

Use of Adverse Facts Available (''AFA'')

As noted in the *Preliminary Determination,* two of the three mandatory respondents in this investigation, Woojin Industry Co., Ltd. (''Woojin''), and Fortune Metallurgical Group Co., Ltd. (''Fortune''), failed to respond to the Department's questionnaire or otherwise participate in the investigation. Therefore, we preliminarily based their dumping margins on facts otherwise available with an adverse inference, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (''the Act'') and assigned to them the petition dumping margin of 54.69 percent.[3] No parties commented on this preliminary decision. For this final determination, we have continued to assign Fortune and Woojin a dumping margin of 54.69 percent as AFA.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum accompanying this notice, which is hereby adopted by this notice. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice in the Appendix.

Verification

As provided in section 782(i) of the Act, in November 2016, the Department verified the sales and cost data reported by Korvan Ind., Co., Ltd. (''Korvan''), the sole cooperating mandatory respondent in this investigation. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Korvan.

Changes to the Dumping Margin Calculations Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the dumping margin calculation for Korvan. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''all-others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* dumping margins, and any dumping margins determined entirely under section 776 of the Act. We based our calculation of the ''all-others'' rate on the dumping margin calculated for Korvan, the only participating mandatory respondent in this investigation.

Final Determination Dumping Margins

The Department determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Weighted-average dumping margins (percent)
Fortune Metallurgical Group Co., Ltd	54.69
Korvan Ind. Co., Ltd	3.22
Woojin Ind. Co., Ltd	54.69
All-Others	3.22

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of ferrovanadium from the Republic of Korea which were entered, or withdrawn from warehouse, for consumption on or after November 1, 2016, the date of publication of the *Preliminary Determination.* These suspension of liquidation instructions will remain in effect until further notice.

Pursuant to section 733(d) of the Act and 19 CFR 351.205(d), we will instruct CBP to require cash deposits equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated in the table above, as follows: (1) The cash deposit for the mandatory respondents listed above will be the respondent-specific weighted-average dumping margin listed for the respondent in the table above; (2) if the exporter is not a mandatory respondent identified above, but the producer is, the cash deposit rate will be the weighted-average dumping margin established for the producer of the subject merchandise; and (3) the rate for all other producers or exporters will be the all others rate listed in the table above.[4]

[1] *See Ferrovanadium From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures,* 81 FR 75806 (November 1, 2016) (''*Preliminary Determination*'').

[2] *See* Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen Acting Assistant Secretary for Enforcement and Compliance ''Ferrovanadium from the Republic of Korea: Issues and Decision Memorandum for the Final Determination of Sales at Less-Than-Fair-Value,'' dated concurrently with this notice (''Issues and Decision Memorandum'').

[3] *See Ferrovanadium From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures,* 81 FR 75806 (November 1, 2016).

[4] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (''ITC'') of our final determination. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine within 45 days of the final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise. If the ITC determines that such injury exists, the Department will issue an antidumping duty order directing CBP to assess, upon further-instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders (''APOs'')

This notice will serve as a reminder to parties subject to APOs of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the-regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i) of the Act.

Dated: March 16, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics in the Issues and Decision Memorandum

I. Summary
II. List of Issues
III. Background
IV. Scope of the Investigation
V. Discussion of the Issues
Comment 1: Whether the Department Should Use Contract Date as the Date of Sale for Korvan's Sales to one of its U.S. Customers
Comment 2: Duty Drawback
Comment 3: Whether the Department Should Continue to Treat Korvan's Separate Home Market Sale of Korvan-Produced and Korvan-Purchased Ferrovanadium as a Separate Sales
Comment 4: Whether the Department Should Apply Its Standard Average-To-Average Method Calculating the Margin in the Final Determination
Comment 5: Whether the Department Made Certain Ministerial Errors in its Calculations
Comment 6: General and administrative (G&A) Expenses
Comment 7: Financial Expenses
Comment 8: Whether to Continue to Apply a Quarterly Cost Methodology
V. Recommendation

[FR Doc. 2017–05808 Filed 3–22–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–045]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (Department) determines that 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The final weighted-average dumping margins for the investigation on HEDP from the PRC are listed in the ''Final Determination Margins'' section of this notice.

DATES: Effective March 23, 2017.

FOR FURTHER INFORMATION CONTACT: Omar Qureshi or Kenneth Hawkins, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5307 or (202) 482–6491, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 2016, the Department published its *Preliminary Determination*.[1] We invited interested parties to comment on our *Preliminary Determination* of sales at LTFV. For a list of the parties that filed case and rebuttal briefs, *see* the Issues and Decision Memorandum.[2]

Period of Investigation

The period of investigation (POI) is July 1, 2015, through December 31, 2015. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was January 2016.[3]

Scope of the Investigation

The merchandise covered by this investigation includes all grades of aqueous acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid (HEDP), also referred to as hydroxyethylidenendiphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The Chemical Abstract Service (CAS) registry number for HEDP is 2809–21–4.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2931.90.9043. It may also enter under HTSUS subheadings 2811.19.6090 and 2931.90.9041. While HTSUS subheadings and the CAS registry number are provided for convenience and customs purposes only, the written description of the scope of this investigation is dispositive.

Analysis of Comments Received

We addressed all issues raised by parties in case and rebuttal briefs in the Issues and Decision Memorandum.[4] The Appendix to this notice includes a list of the issues which the parties raised and to which the Department responded in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* The Issues and Decision Memorandum is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum is available at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of

[1] *See* 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination, 81 FR 76916 (November 4, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for the Final Determination of the Less-Than-Fair-Value Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China,'' dated concurrently with this notice (Issues and Decision Memorandum).

[3] *See* 19 CFR 351.204(b)(1).

[4] *See* Issues and Decision Memorandum.

the Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Act, in December 2016, the Department conducted verification of the information submitted by Shandong Taihe Chemical Co., Ltd. (Taihe), Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory and Nantong Uniphos Chemicals Co., Ltd. (collectively, WW Group) for use in the final determination. We issued our verification reports on January 19, 2017.[5] The Department used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.[6]

Changes Since the Preliminary Determination

Based on the Department's verifications of Taihe and WW Group, we made changes from the *Preliminary Determination.* For WW Group, the Department classified the company's joint-product as a co-product. Additionally, we made a change to the calculation of inventory carrying costs and irrecoverable value-added tax.

For Taihe, the Department did not use a net realizable value calculation in Taihe's margin calculation. Additionally, for Taihe, we included inventory carrying costs for all sales where warehousing expenses were reported. The Department also included indirect selling expenses in Taihe's margin calculation.

The Department also made the necessary calculation adjustment to international freight, domestic brokerage, and domestic inland freight where the expenses are calculated on a gross weight basis for both Taihe and WW Group. Lastly, the Department made the necessary calculation adjustment for marine insurance surrogate value for Taihe and WW Group.

PRC-Wide Entity

As explained in the *Preliminary Determination,* we are applying a rate based entirely on adverse facts available (AFA) to the PRC-wide entity. The Department did not receive timely responses to its quantity and value (Q&V) questionnaire or separate rate applications from certain PRC exporters and/or producers of subject merchandise that were named in the petition and to which the Department issued Q&V questionnaires.[7] As these non-responsive PRC companies did not demonstrate that they are eligible for separate rate status, the Department continues to consider them to be part of the PRC-wide entity. Further, because these non-responsive companies withheld requested information, significantly impeded the proceeding, and failed to cooperate to the best of their abilities, we are basing the PRC-wide entity rate on AFA.

PRC-Wide Rate

In selecting the AFA rate for the PRC-wide entity, the Department's practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[8] Specifically, it is the Department's practice to select, as an AFA rate, the higher of: (a) The highest dumping margin alleged in the petition; or, (b) the highest calculated dumping margin of any respondent in the investigation.[9] As AFA, the Department has assigned to the PRC-wide entity the rate of 184.01 percent, which is the highest calculated dumping margin of any respondent in the investigation.

Non-Selected Separate Rate

In calculating rates for non-individually investigated respondents in the context of non-market economy cases, the Department looks to section 735(c)(5)(A)–(B) of the Tariff Act of 1930, (as amended) (the Act), which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be equivalent to the weighted average of the estimated weighted-average dumping margins calculated for exporters and producers individually investigated, excluding any margins that are zero, *de minimis,* or based entirely on facts available. Section 735(c)(5)(B) of the Act provides that where all individually investigated exporters or producers receive rates that are zero, *de minimis,* or based entirely on facts available, then the Department may use ''any reasonable method'' to establish the all-others rate for those companies not individually investigated.

Apart from the mandatory respondents in this investigation, two other PRC exporters of the subject merchandise during the POI established entitlement to a separate rate.[10] Thus, separate rates are being assigned in this segment to Jianghai Environmental Protection Co., Ltd. (Jianghai) and Henan Qingshuiyuan Technology Co., Ltd. (Qingshuiyuan). There currently exist no individually investigated respondents that have failed to cooperate in this investigation, and there are no zero or *de minimis* margins. Therefore, we are continuing to determine the separate rate for non-selected companies (Jianghai and Qingshuiyuan) based on a weighted average of the calculated rates determined for the mandatory respondents,[11] in accordance with section 735(c)(5)(A) of the Act.

Final Determination

The Department determines that the estimated final weighted-average dumping margins are as follows:

[5] *See* the Department's two memoranda regarding: ''Verification of the Questionnaire Responses of Shandong Taihe Chemical Co., Ltd. in the Antidumping Investigation of HEDP from the People's Republic of China'' (January 19, 2017) (Taihe Verification Report); and ''Verification of the Questionnaire Responses of the WW Group in the Antidumping Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (''HEDP'') from the People's Republic of China'' (January 19, 2017) (WW Group's Verification Report).

[6] *Id.*

[7] *See Preliminary Determination,* and accompanying Preliminary Decision Memorandum at 16–17 (Separate Rate).

[8] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose from Finland,* 69 FR 77216 (December 27, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from Finland,* 70 FR 28279 (May 17, 2005).

[9] *See, e.g., Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 17436, 17438 (March 26, 2012); *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum.

[10] *See Preliminary Decision.*

[11] We have calculated (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We compared (B) and (C) to (A) and selected the rate closest to (A). Accordingly, we selected (C) as the most appropriate rate for all other companies. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

Producer	Exporter	Weighted-average dumping margin (percent)	Cash deposit rate (percent)
Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory.	Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory and Nantong Uniphos Chemicals Co., Ltd.	184.01	184.01
Shandong Taihe Water Treatment Technologies Co., Ltd.	Shandong Taihe Chemicals Co., Ltd	167.58	167.28
Henan Qingshuiyuan Technology Co., Ltd	Henan Qingshuiyuan Technology Co., Ltd	179.76	179.46
Jianghai Environmental Protection Co., Ltd	Jianghai Environmental Protection Co., Ltd	179.76	179.46
PRC-Wide Entity		184.01	184.01

Disclosure

We intend to disclose to parties the calculations performed in this proceeding within five days of any public announcement of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of HEDP from the PRC, as described in the ''Scope of the Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after November 4, 2016, the date of publication of the *Preliminary Determination* notice in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act, the Department will instruct CBP to require a cash deposit [12] equal to the weighted-average amount by which NV exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combination listed in the table above will be the rate identified for that combination in the table; (2) for all combinations of PRC exporters/producers of merchandise under consideration that have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate established for the PRC-wide entity; and (3) for all non-PRC exporters of the merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension of liquidation instructions will remain in effect until further notice.

We normally adjust antidumping duty cash deposit rates by the amount of export subsidies, where appropriate. In the companion CVD investigation, we have found that the WW Group did not receive export subsidies.[13] Therefore, no offset to the WW Group's cash deposit rate for export subsidies is necessary.[14] With respect to Taihe, because its countervailing duty rate in the companion investigation included an amount for export subsidies, an offset of 0.30 percent will be made to its cash deposit rate.[15] With respect to the separate-rate companies, we find that an export subsidy adjustment of 0.30 percent to the cash deposit rate is warranted because this is the export subsidy rate included in the countervailing duty ''all others'' rate to which the separate-rate companies are subject. For the PRC-wide entity, which received an adverse facts available rate in this preliminary determination, as an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, the Department has not adjusted the PRC-wide entity's AD cash deposit rate by the lowest export subsidy rate determined for any party in the companion CVD proceeding, because the lowest export subsidy rate determined in the companion CVD proceeding is 0.00 percent.[16] [17]

Pursuant to section 777A(f) of the Act, we normally adjust preliminary cash deposit rates for estimated domestic subsidy pass-through, where appropriate. However, in this case there is no basis to grant a domestic subsidy pass-through adjustment.[18]

International Trade Commission Notification

In accordance with section 735(d) of the Act, we notified the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. As the Department's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of HEDP for sale from the PRC, or sales (or the likelihood of sales) for importation, of HEDP from the PRC. If the ITC determines that such injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Return or Destruction of Proprietary Information

This notice also serves as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of propriety information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

[12] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[13] *See Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* filed concurrently with this notice.

[14] *Id.*

[15] *Id.*

[16] *See, e.g., Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination,* 80 FR 4250 (January 27, 2015), and accompanying Issues and Decision Memorandum at 35.

[17] *See HEDP CVD Prelim* at 81 FR 62085.

[18] *See* Preliminary Decision Memorandum at 28–29.

Dated: March 20, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Scope Comments
VI. Changes Since the Preliminary Determination
VII. List of Issues
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Comment 2: Selection of Surrogate Final Ratios and Use of CYDSA's Financial Statement
Comment 3: Treatment of Joint Product
Comment 4: Treatment of Water
Comment 5: Net Versus Gross Weight
Comment 6: Surrogate Value for Marine Insurance
Comment 7: Recalculating Marine Insurance by Using Gross Unit Price
Comment 8: Consideration of FOPs as Overhead
Comment 9: Partial Rejection of Petitioner's SV Submissions
Comment 10: Selection of Voluntary Respondent
Comment 11: Surrogate Value for Ocean Freight
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Company-Specific Issues: Taihe
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IX. Conclusion

[FR Doc. 2017–05805 Filed 3–22–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 170221188–7188–01]

RIN 0693–XC072

National Cybersecurity Center of Excellence (NCCoE) Capabilities Assessment for Securing Manufacturing Industrial Control Systems for the Manufacturing Sector

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites organizations to provide products and technical expertise to support and demonstrate security platforms for the *Capabilities Assessment for Securing Manufacturing Industrial Control Systems.* This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address cybersecurity challenges identified under the Manufacturing sector program. Participation in the *Capabilities Assessment for Securing Manufacturing Industrial Control Systems* use case is open to all interested organizations.

DATES: Interested parties must contact NIST to request a letter of interest template to be completed and submitted to NIST. Letters of interest will be accepted on a first come, first served basis. Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities of the project, but no earlier than April 24, 2017. When the use case has been completed, NIST will post a notice on the NCCoE Manufacturing sector program Web site at *https://nccoe.nist.gov/projects/use_cases/manufacturing* announcing the completion of the use case and informing the public that it will no longer accept letters of interest for the *Capabilities Assessment for Securing Manufacturing Industrial Control Systems* use case.

ADDRESSES: The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to *manufacturing_nccoe@nist.gov,* or via hardcopy to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign a Cooperative Research and Development Agreement (CRADA) with NIST. A CRADA template can be found at: *https://nccoe.nist.gov/library/nccoe-consortium-crada-example.*

FOR FURTHER INFORMATION CONTACT: Jim McCarthy via email at *James.McCarthy@nist.gov;* by telephone at 301–975–0228; or by mail to National Institute of Standards and Technology, NCCoE, 9700 Great Seneca Highway, Rockville, MD 20850. Additional details about the Manufacturing sector program can be found here: *https://nccoe.nist.gov/projects/use_cases/manufacturing.*

SUPPLEMENTARY INFORMATION:

Background: The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems; reduce risk for companies and individuals using IT systems; and encourage development of innovative, job-creating cybersecurity products and services.

Process: NIST is soliciting responses from all sources of relevant security capabilities (see below) to enter into a Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate security platforms for the *Capabilities Assessment for Securing Manufacturing Industrial Control Systems* for the Manufacturing sector. The full *Capabilities Assessment for Securing Manufacturing Industrial Control Systems* use case can be viewed here: *https://nccoe.nist.gov/projects/use_cases/capabilities-assessment-securing-manufacturing-industrial-control-systems.*

Interested parties should contact NIST using the information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. NIST will then provide each interested party with a letter of interest template, which the party must complete, certify that it is accurate, and submit to NIST. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the use case objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or capabilities listed below up to the number of participants in each category necessary to carry out this use case. However, there may be continuing opportunities to participate even after initial activity commences. Selected participants will be required to enter into a consortium CRADA with NIST (for reference, see **ADDRESSES** section above). NIST published a notice in the **Federal Register** on October 19, 2012 (77 FR 64314) inviting U.S. companies to enter into National Cybersecurity Excellence Partnerships (NCEPs) in

furtherance of the NCCoE. For this demonstration project, NCEP partners will not be given priority for participation.

Capabilities Assessment for Securing Manufacturing Industrial Control Systems Objective: This is the first of a four-part series designed to provide businesses with the information they need to establish an anomaly detection and prevention capability in their own environments. This project will be using commercially available hardware/software deployed on an established lab infrastructure. The goal of this project is to provide businesses with a cybersecurity example solution that can be implemented or that can inform improved cybersecurity in their manufacturing processes. Implementing behavioral anomaly detection tools provides a key security component in sustaining business operations, particularly those based on Industrial Control Systems (ICS). One of the ways to disrupt operations is to introduce anomalous data into a manufacturing process, whether deliberately or inadvertently. Although the example solution will focus on cybersecurity, our example solution may also produce residual benefit to manufacturers for detecting anomalous conditions not related to security. A detailed description of the *Capabilities Assessment for Securing Manufacturing Industrial Control Systems* Project is available at *https://nccoe.nist.gov/projects/use_cases/capabilities-assessment-securing-manufacturing-industrial-control-systems.*

Requirements: Each responding organization's letter of interest should identify which security platform component(s) or capability(ies) it is offering. Letters of interest should not include company proprietary information, and all components and capabilities must be commercially available. Components are listed in the High-Level Architectures section of the *Capabilities Assessment for Securing Manufacturing Industrial Control Systems* use case (for reference, please see the link in the Process section above) and include, but are not limited to:

- ICS behavioral anomaly detection tools.
- Human Machine Interfaces (HMIs).
- Programmable Logic Controllers (PLCs).
- Security Information and Event Management (SIEM) platform.

Each responding organization's letter of interest should identify how their products address one or more of the following desired solution characteristics in the High-Level Architectures section of the *Capabilities Assessment for Securing Manufacturing Industrial Control Systems* use case (for reference, please see the link in the Process section above):

- Detection of anomalous conditions.
- Process and/or device damage prevention.
- SIEM-based alerting/alarming capability.

In their letters of interest, responding organizations need to understand and commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary to make functional connections among security platform components; and

2. Support for development and demonstration of the *Capabilities Assessment for Securing Manufacturing Industrial Control Systems* for the Manufacturing sector use case in NCCoE facilities, which will be conducted in a manner consistent with Federal requirements (*e.g.,* FIPS 200, FIPS 201, SP 800–53, and SP 800–63).

Additional details about the *Capabilities Assessment for Securing Manufacturing Industrial Control Systems* for the Manufacturing sector use case are available at: *https://nccoe.nist.gov/projects/use_cases/capabilities-assessment-securing-manufacturing-industrial-control-systems.* NIST cannot guarantee that all of the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the consortium CRADA in the development of the *Capabilities Assessment for Securing Manufacturing Industrial Control Systems* for the Manufacturing sector capability. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations to the manufacturing community. Following successful demonstrations, NIST will publish a description of the security platform and its performance characteristics sufficient to permit other organizations to develop and deploy security platforms that meet the security objectives of the *Capabilities Assessment for Securing Manufacturing Industrial Control Systems* for the Manufacturing sector use case. These descriptions will be public information.

Under the terms of the consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security platform documentation, and demonstration activities.

The dates of the demonstration of the *Capabilities Assessment for Securing Manufacturing Industrial Control Systems* for the Manufacturing sector capability will be announced on the NCCoE Web site at least two weeks in advance at *http://nccoe.nist.gov/.* The expected outcome of the demonstration is to improve security to manufacturing environments that employ the use of ICS, and subsequent adoption of behavioral anomaly detection tools by industry. Participating organizations will benefit from the knowledge that their products are interoperable with other participants' offerings.

For additional information on NCCoE governance, business processes, and operational structure, visit the NCCoE Web site *http://nccoe.nist.gov/.*

Kevin Kimball,

NIST Chief of Staff.

[FR Doc. 2017–05759 Filed 3–22–17; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF308

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council and its Committees.

DATES: The meetings will be held on Tuesday, April 11 through Thursday, April 13, 2017. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meetings will be held at the Icona Golden Inn, 7849 Dune Drive, Avalon, NJ 08202; telephone: (609) 368–5155.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State

Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's Web site when possible).

Agenda

Tuesday, April 11, 2017

River Herring & Shad Committee

- Review draft metrics for river herring and shad conservation.

State of the Ecosystem and EAFM

- Report on the state of the Mid-Atlantic portion of the Northeast Large Marine Ecosystem, continue discussion and development of EAFM Risk Matrix, and discuss next steps in EAFM development/implementation.

Law Enforcement Reports

Chub Mackerel Amendment

- Review amendment development and scoping plans.

Wednesday, April 12, 2017

Ricks E Savage Award

Golden Tilefish Specifications

- Review SSC, Monitoring Committee, Advisory Panel, and staff recommendations regarding 2018–20 specifications.
- Adopt recommendations for 2018–20.

Blueline Tilefish Specifications

- Review SSC, Monitoring Committee, Advisory Panel, and staff recommendations regarding 2018–19 specifications.
- Adopt recommendations for 2018–19.

A Review of Potential Approaches for Managing Marine Fisheries in a Changing Climate Presentation

Hudson Canyon Sanctuary Proposal

- Presentation, discussion and comment.

Update on Standardized Bycatch Reporting Methodology

- Challenges faced in 2016–17 and plans for 2017–18.

Industry Funded Monitoring (IFM) Amendment

- Consider previous action on IFM Amendment.
- Possible adoption of IFM Amendment.

Thursday, April 13, 2017

Business Session

The day will conclude with Committee Reports, the Executive Director's Report, the Science Report, brief reports from the National Marine Fisheries Service's GARFO and the Northeast Fisheries Science Center, NOAA's Office of General Counsel, the ASMFC, the New England and South Atlantic Fishery Council's liaisons and the Regional Planning Body Report, and discuss any continuing and/or new business.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: March 20, 2017.

Jeffrey N. Lonergan,

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

[FR Doc. 2017–05789 Filed 3–22–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF307

Fisheries of the Gulf of Mexico and 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 48 Post-Data Workshop webinar for Southeastern U.S. black grouper.

SUMMARY: The SEDAR 48 assessment process of Southeastern U.S. black grouper will consist of a Data Workshop, an Assessment Workshop and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 48 post-Data Workshop webinar will be held April 11, 2017, from 1 p.m. to 3 p.m. Eastern Time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer 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: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@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. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS 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 NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the pre-data workshop webinar are as follows:

Panelists will present finalized data for review and recommendation.

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

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: March 20, 2017.

Jeffrey N. Lonergan,

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

[FR Doc. 2017–05788 Filed 3–22–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF306

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The River Herring and Shad Advisory Panel of the Mid-Atlantic Fishery Management Council (Council) will hold a meeting.

DATES: The meeting will be held on Friday, April 7, 2017, beginning at 1 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option. Details will be posted at *http://www.mafmc.org/council-events/2017/river-herring-and-shad-advisory-panel-meeting.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to gather input from the Advisory Panel on Council efforts to develop metrics for evaluating progress on river herring and shad conservation.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: March 20, 2017.

Jeffrey N. Lonergan,

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

[FR Doc. 2017–05787 Filed 3–22–17; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11:00 a.m., Thursday, March 30, 2017.

PLACE: Three Lafayette Centre, 1155 21st Street NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, enforcement, and examinations matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Natise Allen,

Executive Assistant.

[FR Doc. 2017–05858 Filed 3–21–17; 11:15 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning AmeriCorps Commission Support Application Instructions. State commissions will respond to the questions included in this ICR in order to apply for funding through these grants and to report on progress and performance measures.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 22, 2017.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service; Attention James Stone, Senior Program and Project Specialist, 250 E Street SW., Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time Monday through Friday, except Federal holidays.

(3) Electronically through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: James Stone, (202) 606–6885, or by email at *jstone@cns.gov.*

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected 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 submissions of responses).

Background

These application instructions will be used by applicants for funding through AmeriCorps State and National Commission Support grants.

Current Action

CNCS seeks to renew its Commission Support Application Instructions with no changes. The Application Instructions will be used on an annual basis by State Service Commissions to report on progress and apply for funding. CNCS proposes to continue to use the currently cleared application until the renewal is approved by OMB.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Commission Support Application Instructions.

OMB Number: 3045–0099.

Agency Number: None.

Affected Public: Nonprofit organizations, State, Local and Tribal.

Total Respondents: 52.

Frequency: Annually.

Average Time per Response: 37 hours.

Estimated Total Burden Hours: 1,924 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 17, 2017.

James R. Stone,

Senior Program and Projects Specialist, AmeriCorps State and National.

[FR Doc. 2017–05816 Filed 3–22–17; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Judicial Proceedings Since Fiscal Year 2012 Amendments Panel; Notice of Federal Advisory Committee Meeting

AGENCY: General Counsel of the Department of Defense, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel will take place.

DATES: Open to the public, Friday, April 7, 2017, from 9:00 a.m. to 4:15 p.m.

ADDRESSES: One Liberty Center, 875 N. Randolph Street, Suite 1432, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Maria Fried, 703–571–2664 (Voice), 703–693–3903 (Facsimile), *whs.pentagon.em.mbx.jusicial-panel@mail.mil* (Email). Mailing address is Judicial Proceedings Panel, One Liberty Center, 875 N. Randolph Street, Suite 1432, Arlington, Virginia 22203. Web site: *http://jpp.whs.mil/.* The most up-to-date changes to the meeting agenda can be found on the Web site.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140. Contact: Ms. Julie Carson, Judicial Proceedings Panel, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, Virginia 22203. Email: *whs.pentagon.em.mbx.judicial-panel@mail.mil.* Phone: (703) 693–3849. Web site: *http://jpp.whs.mil.*

Availability of Materials for the Meeting: A copy of the April 7, 2017, public meeting agenda and any updates or changes to the agenda, including the location and individual speakers not identified at the time of this notice, as well as other materials provided to Panel members for use at the public meeting, may be obtained at the meeting or from the Panel's Web site. Committee's Designated Federal Official: The Panel's Designated Federal Official is Ms. Maria Fried, Department of Defense, Office of the General Counsel, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301–1600.

Purpose of the Meeting: In section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), as amended, Congress tasked the Judicial Proceedings Panel to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses since the amendments made to the UCMJ by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81; 125 Stat. 1404), for the purpose of developing recommendations for improvements to such proceedings. At this meeting, the Panel will receive a presentation on sexual assault adjudication data compiled by the JPP for fiscal year 2015 from JPP staff and Dr. Cassia Spohn, Director of the School of Criminology and Criminal Justice at Arizona State University. The Panel will also receive a presentation by officials from the DoD Sexual Assault Prevention and Response Office and the Office of the Under Secretary of Defense for Personnel and Readiness on DoD statistical data regarding military adjudication of sexual assault offenses and the implementation status of previous JPP recommendations regarding DoD sexual assault data collection and reporting. Finally, the JPP will continue deliberations on its victims' appellate rights report.

Agenda:

8:30 a.m.–9:00 a.m. Administrative Work (41 CFR 102–3.160, not subject to notice & open meeting requirements).

9:00 a.m.–9:15 a.m. Welcome and Introduction.

9:15 a.m.–12:15 p.m. Presentation of FY 2015 Sexual Assault Adjudication Data—Ms. Meghan Peters, Staff Attorney, Judicial Proceedings Panel—Dr. Cassia Spohn, Professor and Director, School of Criminology and Criminal Justice, Arizona State University.

12:15 p.m.–1:00 p.m. Lunch.

1:00 p.m.–2:30 p.m. DoD Presentation on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses and DoD Update on JPP Recommendations 37 and 38 Regarding DoD Sexual Assault Data Collection and Reporting—Senior Leader, OSD—Dr. Nathan Galbreath, Senior Executive Advisor, Department of Defense Sexual Assault Prevention and Response Office.

2:30 p.m.–4:00 p.m. Deliberations on JPP Victims' Appellate Rights Report.

4:00 p.m.–4:15 p.m. Public Comment.

4:15 p.m. Meeting Adjourned.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. Visitors are required to sign in at the One Liberty Center security desk and must leave government-issued photo identification on file while in the building. Department of Defense Common Access Card (CAC) holders who do not have authorized access to One Liberty Center must provide an alternate form of government-issued photo identification to leave on file with security while in

the building. All visitors must pass through a metal detection security screening. In the event the Office of Personnel Management closes the government due to inclement weather or for any other reason, please consult the Web site for any changes to the public meeting date or time. Individuals requiring special accommodations to access the public meeting should contact the Judicial Proceedings Panel at *whs.pentagon.em.mbx.judicial-panel@mail.mil* at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Panel about its mission and topics pertaining to this public session. Written comments must be received by the JPP at least five (5) business days prior to the meeting date so that they may be made available to the Judicial Proceedings Panel for their consideration prior to the meeting. Written comments should be submitted via email to the Judicial Proceedings Panel at *whs.pentagon.em.mbx.judicial-panel@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the Judicial Proceedings Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement pertaining to the agenda for the public meeting, a written statement must be submitted as above along with a request to provide an oral statement. After reviewing the written comments and the oral statement, the Chair and the Designated Federal Official will determine who will be permitted to make an oral presentation of their issue during the public comment portion of this meeting. This determination is at the sole discretion of the Chair and Designated Federal Official, will depend on the time available and relevance to the Panel's activities for that meeting, and will be on a first-come basis. When approved in advance, oral presentations by members of the public will be permitted from 4:00 p.m. to 4:15 p.m. on April 7, 2017, in front of the Panel members.

Dated: March 20, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–05765 Filed 3–22–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2017–ICCD–0039]

Agency Information Collection Activities; Comment Request; School Survey on Crime and Safety (SSOCS) 2018 and 2020

AGENCY: Department of Education (ED), National Center for Education Statistics (NCES).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 22, 2017.

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–2017–ICCD–0039. 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 224–84, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

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: School Survey on Crime and Safety (SSOCS) 2018 and 2020.

OMB Control Number: 1850–0761.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 7,692.

Total Estimated Number of Annual Burden Hours: 2,974.

Abstract: The School Survey on Crime and Safety (SSOCS) is a nationally representative survey of elementary and secondary school principals that serves as the primary source of school-level data on crime and safety in public schools. SSOCS is the only recurring federal survey collecting detailed information on the incidence, frequency, seriousness, and nature of violence affecting students and school personnel from the school's perspective. Data are also collected on frequency and types of disciplinary actions taken for select offenses; perceptions of other disciplinary problems, such as bullying, verbal abuse and disorder in the classroom; the presence and role of school security staff; parent and community involvement; staff training; mental health services available to students; and, school policies and programs concerning crime and safety. Prior administrations of SSOCS were conducted in 2000, 2004, 2006, 2008, 2010, and 2016. This request is to conduct the 2018 and 2020 administrations of SSOCS.

Dated: March 20, 2017.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–05806 Filed 3–22–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2017–ICCD–0040]

Agency Information Collection Activities; Comment Request; National Assessment of Educational Progress (NAEP) 2018–2019

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 22, 2017.

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–2017–ICCD–0040. 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 224–84, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

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: National Assessment of Educational Progress (NAEP) 2018–2019.

OMB Control Number: 1850–0928.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 759,283.

Total Estimated Number of Annual Burden Hours: 371,166.

Abstract: The National Assessment of Educational Progress (NAEP), conducted by the National Center for Education Statistics (NCES), is a federally authorized survey of student achievement at grades 4, 8, and 12 in various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, technology and engineering literacy (TEL), and the arts. The National Assessment of Educational Progress Authorization Act (Pub. L. 107–279 Title III, section 303) requires the assessment to collect data on specified student groups and characteristics, including information organized by race/ethnicity, gender, socio-economic status, disability, and limited English proficiency. It requires fair and accurate presentation of achievement data and permits the collection of background, noncognitive, or descriptive information that is related to academic achievement and aids in fair reporting of results. The intent of the law is to provide representative sample data on student achievement for the nation, the states, and subpopulations of students and to monitor progress over time. The nature of NAEP is that burden alternates from a relatively low burden in national-level administration years to a substantial burden increase in state-level administration years when the sample has to allow for estimates for individual states and some of the large urban districts. This submission requests OMB's approval for main NAEP assessments in 2018 and 2019, including operational, pilot, and special studies. The NAEP results will be reported to the public through the Nation's Report Card as well as other online NAEP tools.

Dated: March 20, 2017.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–05812 Filed 3–22–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2337–077]

PacifiCorp; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2337–077.

c. *Date filed:* December 30, 2016.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Prospect No. 3 Hydroelectric Project.

f. *Location:* On the South Fork Rogue River, in Jackson County, Oregon. The project occupies 38.1 acres of United States lands within the Rogue River-Siskiyou National Forest under the jurisdiction of the U.S. Forest Service (Forest Service).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Steve Albertelli, Relicensing Project Manager, PacifiCorp, 925 South Grape Street, Building 5, Medford, OR 97501; (541) 776–6676 or email at *steve.albertelli@pacificorp.com.*

i. *FERC Contact:* Dianne Rodman at (202) 502–6077 or email at *dianne.rodman@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary 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 motions to intervene, protests, comments, recommendations, preliminary terms

and conditions, and preliminary fishway 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–2337–077.

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 for filing and is now ready for environmental analysis.

l. *The existing project consists of:* (1) A 24-foot-high, 172-foot-long concrete diversion dam with an integrated 98-foot-long ungated, uncontrolled ogee spillway section; (2) a 1-acre reservoir that extends 550 feet upstream from the dam with a gross storage capacity of 19 acre-feet at normal full pool elevation of 3,375 feet above sea level; (3) an 18-foot-wide intake structure at the north end of the dam on the right bank with trash rack; (4) a 15,894-foot-long flow conveyance system (project waterway) consisting of: A 273-foot-long concrete-lined canal fitted with a 25-foot-long, 9.75-foot-wide fish screen; a 66-inch-diameter, 5,448-foot-long woodstave pipe; a 5,805-foot-long concrete-lined canal; a 5-foot-wide, 6.5-foot-high, 698-foot-long concrete-lined horseshoe-shaped tunnel; a 416-foot-long canal to the forebay with a 2,486-foot-long side channel spillway discharging to Daniel Creek; and a 66-inch- to 48-inch-diameter, 3,254-foot-long riveted steel penstock; (5) a powerhouse containing one vertical-shaft Francis-type turbine with an installed capacity of 7.2 megawatts; (6) a 20-foot-long, 20-foot-wide, 5-foot-deep concrete tailrace; (7) a 66-inch-diameter, 887-foot-long woodstave inverted siphon that routes flow from the tailrace to the non-project Middle Fork Canal; (8) a 6.97-mile-long, 69-kilovolt transmission line interconnecting at the Prospect Central substation; (9) an 86-foot-long, 15-pool concrete pool-and-weir ladder to provide upstream fish passage past the dam; and (10) appurtenant facilities. The project produces an average of 35.05 gigawatt-hours annually.

PacifiCorp proposes to: Improve fish ladder function by constructing an auxiliary bypass flow system, realigning and extending the existing fish bypass return pipe, and narrowing the weir notches; replace the existing woodstave pipe and inverted wooden siphon with steel structures to eliminate leakage; rehabilitate the temporary vehicle-access bridge over the new steel pipe to meet current Forest Service standards; construct a road spur to facilitate pass-through of materials dredged from the reservoir to the bypassed reach; upgrade the six existing wildlife crossings of the project waterway's canal by widening the crossings and constructing five new wildlife crossings; and install a communications link on the U.S. Geological Survey's South Fork Rogue gage.

PacifiCorp also proposes to increase the project's minimum flow releases and ramping rates limits, as well as extending the project boundary to include the inverted siphon and access roads.

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 Web site 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.

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. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, 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. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. Procedural Schedule:

The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, terms and conditions, and fishway prescriptions.	May 2017
Commission issues EA	October 2017
Comments on EA	November 2017
Modified terms and conditions.	January 2018

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. *A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22:* (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.

Dated: March 15, 2017.

Kimberly D. Bose,

Secretary .

[FR Doc. 2017–05780 Filed 3–22–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2801–040]

Littleville Power Company, Inc.; Hitchcock Hydro, LLC; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On February 9, 2017, Littleville Power Company, Inc. (transferor) and Hitchcock Hydro, LLC (transferee) filed an application for the transfer of license of the Glendale Hydroelectric Project No. 2801. The project is located on the Housatonic River in Berkshire County, Massachusetts. The project does not occupy Federal lands.

The applicants seek Commission approval to transfer the license for the Glendale Hydroelectric Project from the transferor to the transferee.

Applicant's Contacts: For Transferor: Mr. Stephen Pike, Vice President, Operations, Littleville Power Company, Inc., c/o Enel Green Power North America, Inc., 1 Tech Drive, Suite 220, Andover, MA 01810, Email: *Stephen.Pike@enel.com,* Vice President, Power Supply & General Counsel, Green Mountain Power Corporation, 163 Acorn Lane, Colchester; VT 05446; Ms. Elizabeth Kohler, Esq., Downs Rachlin Martin PLLC, 199 Main Street, P.O. Box 190, Burlington, VT 05402; and General Counsel, Enel Green Power North America, Inc., 1 Tech Drive, Suite 220, Andover, MA 01810, Email: *generalcounsel@enel.com.*

For Transferee: Mr. Mark J. Boumansour, Chief Operating Officer, Hitchcock Hydro, LLC, c/o Gravity Renewables, Inc., 1401 Walnut Street, Suite 220, Boulder, CO 80302, Phone: (303) 440–3378, Email: *mark@gravityrenewables.com;* Mr. Karl F. Kumli, III, Dietze and Davis, P.C., 2060 Broadway, Suite 400, Boulder, CO 80302; and Mr. Robert A. Panasci, Esq., Young/Sommer, LLC, Executive Woods, Palisades Drive, Albany, NY 12205.

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2801–040.

Dated: March 16, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–05791 Filed 3–22–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No., 14839–000]

Village of North Bennington; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 28, 2017, the Village of North Bennington, Vermont, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Lake Paran Dam Hydroelectric Project (Lake Paran Project or project) to be located on Paran Creek, near the Village of North Bennington, in Bennington County, Vermont. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Lake Paran Project would consist of: (1) The existing 120-foot-long, 10-foot-concrete gravity Lake Paran Dam and spillway; (2) an existing 35-acre impoundment with a normal maximum water surface elevation 646.65 feet above mean sea level; (3) a new intake structure; (4) a new 250-foot-long, 36-inch diameter penstock; (5) a new 20-foot-long, 10-foot-wide concrete and wood powerhouse containing a single 58-kilowatt turbine-generator unit; (6) a new 1,000-foot-long, 12.47-kilovolt transmission line; and (7) appurtenant facilities. The estimated annual generation of the Lake Paran Project would be 281.84 megawatt-hours.

Applicant Contact: William F. Scully, P.O. Box 338, North Bennington, Vermont 05257; phone: (802) 379–2469; email: *wfscully@gmail.com.*

FERC Contact: Michael Watts; phone: (202) 502–6123; email: *michael.watts@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications 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–14839–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14839) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 16, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–05794 Filed 3–22–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC17–5–000]

Commission Information Collection Activities (FERC–588), Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the information collection FERC–588 (Emergency Natural Gas Transportation, Sale and Exchange Transactions) and will be submitting FERC–588 to the Office of Management and Budget (OMB) for review of the information collection requirements.

DATES: Comments in consideration of the collection of information are due May 22, 2017.

ADDRESSES: You may submit comments identified by Docket No. IC17–5–000 by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–588, Emergency Natural Gas Transportation, Sale and Exchange Transactions.

OMB Control No.: 1902–0144.

Type of Request: Three-year extension of the FERC–588 information collection requirements with no changes to the reporting requirements.

Abstract: The FERC–588 is used by the Commission to implement the statutory provisions of sections 7(c) of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w) and provisions of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432. Under the NGA, a natural gas company must obtain Commission approval to engage in the transportation, sale or exchange of natural gas in interstate commerce. However, section 7(c) exempts from certificate requirements ''temporary acts or operations for which the issuance of a certificate will not be required in the public interest.'' The NGPA also provides for non-certificated interstate transactions involving intrastate pipelines and local distribution companies.

A temporary operation, or emergency, is defined as any situation in which an actual or expected shortage of gas supply would require an interstate pipeline company, intrastate pipeline, or local distribution company, or Hinshaw pipeline to curtail deliveries of gas or provide less than the projected level of service to the customer. The natural gas companies which provide the temporary assistance to the companies which are having the ''emergency'' must file the necessary information described in Part 284, Subpart I of the Commission's Regulations with the Commission, so that it may determine if their assisting transaction/operation qualifies for exemption. The assisting company may or may not be under the Commission's jurisdiction and if their assisting actions qualify for the exemption, they will not become subject to the Commission's jurisdiction for such actions.

A report within forty-eight hours of the commencement of the transportation, sale or exchange, a request to extend the sixty-day term of the emergency transportation, if needed, and a termination report are required. The data required to be filed for the forty-eight hour report is specified by 18 CFR 284.270.

Type of Respondents: Natural Gas Pipelines.

Estimate of Annual Burden: [1] The Commission estimates the Public Reporting Burden for this information collection as:

FERC–588—EMERGENCY NATURAL GAS TRANSPORTATION, SALE AND EXCHANGE TRANSACTIONS

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response [2]	Total annual burden hours & total annual Cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Natural Gas Pipelines	10	3	30	10 hrs.; $765.00	300 hrs $22,950.00	2295.00

[2] The estimates for cost per response are derived using the 2017 FERC average salary plus benefits of $158,754/year (or $76.50/hour). Commission staff finds that the work done for this information collection is typically done by wage categories similar to those at FERC.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 17, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–05782 Filed 3–22–17; 8:45 am]

BILLING CODE 6717–01–P

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

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: EC17–92–000.
Applicants: The Arklahoma Corporation, Entergy Arkansas, Inc., Oklahoma Gas and Electric Company, Southwestern Electric Power Company.
Description: Joint Application for Authorization for Disposition and Acquisition of Jurisdictional Transmission Facilities of the Arklahoma Corporation, et al.
Filed Date: 3/15/17.
Accession Number: 20170315–5193.
Comments Due: 5 p.m. ET 4/5/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–225–004.
Applicants: New Brunswick Energy Marketing Corporation.
Description: Supplement to December 22, 2016 Triennial Market Power Update for the Northeast Region of New Brunswick Energy Marketing Corporation.
Filed Date: 3/15/17.
Accession Number: 20170315–5198.
Comments Due: 5 p.m. ET 4/5/17.

Docket Numbers: ER17–351–001; ER17–354–001.
Applicants: American Falls Solar, LLC, American Falls Solar II, LLC.
Description: Notice of Change in Status of American Falls Solar, LLC, et al.
Filed Date: 3/15/17.
Accession Number: 20170315–5204.
Comments Due: 5 p.m. ET 4/5/17.

Docket Numbers: ER17–1121–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2017–03–16 SA 3006 Duke-Jordan Creek GIA (J515) to be effective 3/3/2017.
Filed Date: 3/16/17.
Accession Number: 20170316–5161.
Comments Due: 5 p.m. ET 4/6/17.

Docket Numbers: ER17–1220–000.
Applicants: Allegheny Energy Supply Company, LLC.
Description: § 205(d) Rate Filing: Amendment to Reactive Service Rate Schedule No. 2 to be effective 12/31/9998.
Filed Date: 3/16/17.
Accession Number: 20170316–5156.
Comments Due: 5 p.m. ET 4/6/17.

Docket Numbers: ER17–1221–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: Revisions to Attachment L—Creditworthiness Procedures to be effective 5/16/2017.
Filed Date: 3/16/17.
Accession Number: 20170316–5160.
Comments Due: 5 p.m. ET 4/6/17.

Docket Numbers: ER17–1222–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2017–03–16 Planning Coordinator Agreement with Southern California Edison to be effective 5/16/2017.
Filed Date: 3/16/17.
Accession Number: 20170316–5163.
Comments Due: 5 p.m. ET 4/6/17.

Docket Numbers: ER17–1224–000.
Applicants: Duke Energy Corporation.
Description: Duke Energy Corporation on behalf of the Duke Energy Companies submits Compliance Refund Report per 35.19a(b): [4/1/2016 Letter Order in PA14–2].
Filed Date: 3/13/17.
Accession Number: 20170313–5367.
Comments Due: 5 p.m. ET 4/3/17.

Docket Numbers: ER17–1226–000.
Applicants: Midcontinent Independent System Operator, Inc., Entergy Services, Inc.
Description: § 205(d) Rate Filing: 2017–03–17_Revisions to Entergy New Orleans (ENO) Attachment O to be effective 6/1/2017.
Filed Date: 3/17/17.
Accession Number: 20170317–5014.
Comments Due: 5 p.m. ET 4/7/17.

Docket Numbers: ER17–1227–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2017–03–17_SA 6510 MISO-Cleco SSR Agreement for Teche 3 to be effective 4/1/2017.
Filed Date: 3/17/17.
Accession Number: 20170317–5023.
Comments Due: 5 p.m. ET 4/7/17.

Docket Numbers: ER17–1228–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2017–03–17_Submittal of Schedule 43J Teche Unit No. 3 SSR Cost Allocation to be effective 4/1/2017.
Filed Date: 3/17/17.
Accession Number: 20170317–5025.
Comments Due: 5 p.m. ET 4/7/17.

Docket Numbers: ER17–1231–000.
Applicants: Northern Indiana Public Service Company.
Description: § 205(d) Rate Filing: Filing of a CIAC Agreement to be effective 3/18/2017.
Filed Date: 3/17/17.
Accession Number: 20170317–5033.
Comments Due: 5 p.m. ET 4/7/17.

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: March 17, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–05819 Filed 3–22–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: 14813–000]

Arkansas Electric Cooperative Corporation; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On January 4, 1017, Arkansas Electric Cooperative Corporation (AECC), filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the River Mountain Pumped Storage Project, at the U.S. Army Corps of Engineers (Corps) Lake Dardanelle on the Arkansas River in Logan County, Arkansas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) A 120-foot-high compacted rock fill embankment surrounding; (2) a 208-acre upper reservoir, with an impervious liner, having 11,650 acre-foot gross storage capacity; (3) a intake/outlet structure in the upper reservoir; (4) a 680-foot-long, 30-foot-diameter,

concrete-lined power shaft penstock; (5) a 1,420-foot-long 30-foot-diameter, concrete-lined, power tunnel penstock that will split into three 16-foot-diameter penstocks approximately 450-foot-long, that will extend to the powerhouse; (6) an underground powerhouse/pump station, containing three reversible pump-turbine generating units, with a total generating capacity of 600 megawatts; (7) a 6,620 foot-long tailrace tunnel to; the existing Corps Lake Dardanelle as its lower reservoir; (8) an intake/outlet structure located on the south shore of Lake Dardanelle; (9) a 8,000-foot-long, 500-kilovolt overhead transmission line from the powerhouse to (10) a proposed substation at the point of interconnection with an existing utility transmission line. The proposed project would have an annual energy generation of 640,000 megawatt-hours.

Applicant Contact: Curtis Warner, Arkansas Electric Cooperative Corporation, 1 Cooperative Way, Little Rock, Arkansas 72209; phone (501) 570–2462.

FERC Contact: Chris Casey, *christiane.casey@ferc.gov,* (202) 502–8577.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *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* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14813) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 16, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–05792 Filed 3–22–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–58–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed St. James Supply Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the St. James Supply Project involving construction and operation of facilities by Transcontinental Gas Pipe Line Company, LLC (Transco) in St. James, Pointe Coupee, and St. Helena Parishes, Louisiana. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before April 14, 2017.

If you sent comments on this project to the Commission before the opening of this docket on February 6, 2017, you will need to file those comments in Docket No. CP17–58–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Transco provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP17–58–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy

Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

The St. James Supply Project would deliver 161,500 dekatherms per day of firm transportation capacity from Transco's existing mainline Compressor Station 65 in St. Helena Parish, Louisiana to the planned Yuhuang Chemical Plant in St. James Parish, Louisiana. Transco would use its existing Southeast Lateral Pipeline (SELA) to deliver gas to the chemical plant. Proposed construction would provide bi-directional flow of natural gas on the SELA pipeline and a secondary source of natural gas to the chemical plant using an existing interconnection on Transco's mainline with the Texas Eastern Transmission Company Pipeline in Pointe Coupee Parish, Louisiana.

The St. James Supply Project would consist of the following facilities:

- 0.7 mile of 20-inch-diameter pipeline;
- one new pig receiver site; [1]
- two new meter and regulating (M&R) stations (Old River Road and Cajun Road M&R Stations);
- a new interconnection to the chemical plant site;
- one new valve and piping to tie the Old River Road M&R Station into the SELA pipeline; and
- piping and valve modifications at existing Transco Compressor Stations 63 and 65.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 77.8 acres of land for the aboveground facilities and the pipeline. Following construction, Transco would maintain about 12.0 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- water resources and wetlands;
- fisheries, vegetation, and wildlife;
- endangered and threatened species;
- land use;
- cultural resources;
- air quality and noise;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

[1] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP17–058). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: March 17, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–05781 Filed 3–22–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–71–000]

ANR Storage Company; Notice of Request Under Blanket Authorization

Take notice that on March 7, 2017 ANR Storage Company (ANR Storage), 700 Louisiana Street, Houston, Texas 77002–2700, filed in Docket No. CP17–71–000 a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) and ANR Storage's authorization in Docket No. CP82–523–000, 21 FERC ¶ 62,109 (1982), for authorization to abandon one injection/withdrawal (I/W) well at its Cold Springs 12 Storage Field in Kalkaska County, Michigan, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Linda Farquhar, Manager, Project Determinations & Regulatory Administration, ANR Storage Company, 700 Louisiana Street, Suite 700, Houston, Texas, 77002–2700, at (832) 320–5685 or fax (832) 320–6685 or *linda_farquhar@transcanada.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: March 16, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–05793 Filed 3–22–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14840–000]

Village of North Bennington; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 28, 2017, the Village of North Bennington, Vermont, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Firehouse Dam Hydroelectric Project (Firehouse Project or project) to be located on Paran Creek, near the Village of North Bennington, in Bennington County, Vermont. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Firehouse Project would consist of: (1) The existing 40-foot-long, 10-foot-concrete gravity Firehouse Dam and spillway topped with new 1-foot-high flashboards and/or a new crest control inflatable rubber gate; (2) an existing 1.27-acre impoundment with a normal maximum water surface elevation 614.03 feet above mean sea level; (3) a new intake structure; (4) a new 20-foot-long, 15-foot-wide concrete and wood powerhouse containing a single 36-kilowatt turbine-generator unit; (5) a new 75-foot-long, 12.47-kilovolt transmission line; and (6) appurtenant facilities. The estimated annual generation of the Firehouse Project would be 171.58 megawatt-hours.

Applicant Contact: William F. Scully, P.O. Box 338, North Bennington, Vermont 05257; phone: (802) 379–2469; email: *wfscully@gmail.com.*

FERC Contact: Michael Watts; phone: (202) 502–6123; email: *michael.watts@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications 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–14840–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14840) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 16, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–05795 Filed 3–22–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC17–8–000]

Commission Information Collection Activities (Ferc Form 73 and Ferc–600); Consolidated Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the requirements and burden of the information collections described below.

DATES: Comments on the collections of information are due May 22, 2017.

ADDRESSES: You may submit comments (identified by Docket No. IC17–8–000) by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Please reference the specific collection number and/or title in your comments.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Type of Request: Three-year extension of the information collection requirements for all collections described below with no changes to the current reporting requirements. Please note that each collection is distinct from the next.

Comments: Comments are invited on: (1) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FERC Form 73, Oil Pipeline Service Life Data

OMB Control No.: 1902–0019.

Abstract: The Commission has authority over interstate oil pipelines as stated in the Interstate Commerce Act, 49 U.S.C. 6501, *et. al.* As part of the information necessary for the subsequent investigation and review of an oil pipeline company's proposed depreciation rates, the pipeline companies are required to provide service life data as part of their data submissions if the proposed depreciation rates are based on the remaining physical life calculations.

This service life data is submitted on FERC Form 73, ''Oil Pipeline Service Life Data''. The FERC Form 73 is used by the Commission to implement the statutory provisions of Sections 306 and 402 of the Department of Energy Organization Act, 42 U.S.C. 7155 and 7172, and Executive Order No. 12009, 42 FR 46277 (September 13, 1977).[1]

The submitted data are used by the Commission to assist in the selection of appropriate service lives and book depreciation rates. Book depreciation rates are used by oil pipeline companies to compute the depreciation portion of their operating expense which is a component of their cost of service which in turn is used to determine the transportation rate to assess customers. FERC staff's recommended book depreciation rates become legally binding when issued by Commission order. These rates remain in effect until a subsequent review is requested and the outcome indicates that a modification is justified. The Commission implements these filings in 18 CFR parts 347 and 357.

Type of Respondent: Oil Pipeline companies.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collection as:

FERC Form 73, Oil Pipeline Service Life Data

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response [2]	Total annual burden & total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Oil Pipelines Undergoing Investigation or Review.	3	1	3	40 hrs.; $3,060	120 hrs.; $9,180	3,060

FERC–600, Rules of Practice and Procedure: Complaint Procedures

OMB Control No.: 1902–0180.

Abstract: The information is used by the Commission to implement the statutory provisions of the Federal Power Act (FPA), 16 U.S.C. 791a–825r; the Natural Gas Act (NGA), 15 U.S.C. 717–717w; the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301–3432; the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 2601–2645; the Interstate Commerce Act (ICA), 49 U.S.C. App. 1 *et. seq.;* the Outer Continental Shelf Lands Act, 43 U.S.C. 1301–1356; and the Energy Policy Act of 2005, (Pub. L. 109–58) 119 Stat. 594.

For the natural gas industry, section 14(a) of the NGA [3] provides that the Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of an investigation.

For public utilities, section 307(a) of the FPA [4] provides that the Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of an investigation.

Section 215(d)(5) of the FPA [5] provides that the Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

For hydropower projects, section 19 of the FPA [6] provides that, as a condition of a license, jurisdiction is conferred upon the Commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control over services, rates, and charges until such time as the State shall have provided a commission or other authority for such regulation and control.

For qualifying facilities, section 210(h)(2)(B) of PURPA [7] provides that any electric utility, qualifying cogenerator, or qualifying small power producer may petition the Commission to enforce the requirements of the Commission's PURPA regulations.

For oil pipelines, in Part 1 of the Interstate Commerce Act, sections 1, 6 and 15 (recodified by Pub. L. 95–473 and found as an appendix to Title 49 U.S.C.),[8] the Commission is authorized to investigate the rates charged by oil pipeline companies subject to its jurisdiction. If an oil rate has been filed and allowed by the Commission to go into effect without suspension and hearing, the Commission can investigate the effective rate on its own motion or by complaint filed with the Commission. Section 13 of the ICA [9] provides that any person can file a complaint complaining of anything done or omitted to be done by an oil pipeline.

In Order No. 602,[10] the Commission revised its regulations governing complaints filed with the Commission under the above statutes. Order No. 602 was designed to encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner. In order to achieve this result, the Commission revised Rule 206 of its Rules of Practice and Procedure (18 CFR 385.206) to require that a complaint satisfy certain informational requirements, to require that answers be filed in a shorter, 20-day time frame, and to provide that parties may employ various types of alternative dispute resolution procedures to resolve their disputes.

The data in complaints filed by interested/affected parties regarding jurisdictional oil, natural gas, electric and hydropower operations, facilities, and services are used by the Commission in establishing a basis to make an initial determination regarding the merits of the complaint and whether or not to undertake further investigation. Investigations may range from whether there is undue discrimination in rates or services to questions regarding market power of

[1] For FERC Form 73 filing instructions and materials, please see *http://www.ferc.gov/docs-filing/forms.asp#form73.*

[2] $76.50/hour is the average of the salary plus benefits for FERC employees for 2017. We assume that respondents to this collection are similarly situated in terms of salary and benefits.

[3] 15 U.S.C. 717m; *accord* 15 U.S.C. 717d.

[4] 16 U.S.C. 825f(a); *accord* 16 U.S.C. 824e.

[5] 16 U.S.C. 824o(d)(5).

[6] 16 U.S.C. 812.

[7] 16 U.S.C. 824a–3(h)(2)(B).

[8] 49 App. U.S.C. 1 *et seq.* (1988).

[9] *Id. 13.*

[10] 64 FR 17087 (April 8, 1999).

regulated entities to environmental concerns. In order to make an informed determination, it is important to know the specifics underlying any oil, gas, electric, and hydropower complaint ''up-front'' in a timely manner and in sufficient detail to allow the Commission to act swiftly. In addition, such complaint data helps the Commission and interested parties to monitor, *e.g.,* the market for undue discrimination or exercises of market power. The information is voluntary but submitted pursuant to prescribed filing requirements. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR parts 343 and 385.

Type of Respondent: Interested/affected parties regarding oil, natural gas, electric and hydropower operations, facilities, and services.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collection as:

FERC–600—RULES OF PRACTICE AND PROCEDURE: COMPLAINT PROCEDURES

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden and cost per response [2]	Total annual burden and total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
FERC–600	62	1	62	160 hrs.; $12,240	9,920 hrs.; $758,880	12,240

Dated: March 16, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–05790 Filed 3–22–17; 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 exempt wholesale generator filings:

Docket Numbers: EG17–78–000.

Applicants: 83WI 8me.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of 83WI 8me.

Filed Date: 3/17/17.

Accession Number: 20170317–5063.

Comments Due: 5 p.m. ET 4/7/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–1236–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to OATT Sch 12—Appdx A re: RTEP Projects Approved by Board in Feb 2017 to be effective 6/15/2017.

Filed Date: 3/17/17.

Accession Number: 20170317–5064.

Comments Due: 5 p.m. ET 4/7/17.

Docket Numbers: ER17–1239–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: Modifications to NITSA/NOA between PNM and Navajo Tribal Utility to be effective 3/1/2017.

Filed Date: 3/17/17.

Accession Number: 20170317–5074.

Comments Due: 5 p.m. ET 4/7/17.

Docket Numbers: ER17–1241–000.

Applicants: Deerfield Wind, LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 5/16/2017.

Filed Date: 3/17/17.

Accession Number: 20170317–5102.

Comments Due: 5 p.m. ET 4/7/17.

Docket Numbers: ER17–1242–000.

Applicants: Tule Wind LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 5/16/2017.

Filed Date: 3/17/17.

Accession Number: 20170317–5103.

Comments Due: 5 p.m. ET 4/7/17.

Docket Numbers: ER17–1243–000.

Applicants: Twin Buttes Wind II LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 5/16/2017.

Filed Date: 3/17/17.

Accession Number: 20170317–5104.

Comments Due: 5 p.m. ET 4/7/17.

Docket Numbers: ER17–1244–000.

Applicants: Chambersburg Energy, LLC.

Description: § 205(d) Rate Filing: Reactive Service Rate Schedule Filings to be effective 12/31/9998.

Filed Date: 3/17/17.

Accession Number: 20170317–5125.

Comments Due: 5 p.m. ET 4/7/17.

Docket Numbers: ER17–1245–000.

Applicants: Gans Energy, LLC.

Description: § 205(d) Rate Filing: Reactive Service Rate Schedule Filings to be effective 12/31/9998.

Filed Date: 3/17/17.

Accession Number: 20170317–5126.

Comments Due: 5 p.m. ET 4/7/17.

Docket Numbers: ER17–1246–000.

Applicants: Springdale Energy, LLC.

Description: § 205(d) Rate Filing: Reactive Service Rate Schedule Filings to be effective 12/31/9998.

Filed Date: 3/17/17.

Accession Number: 20170317–5127.

Comments Due: 5 p.m. ET 4/7/17.

Docket Numbers: ER17–1247–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original Service Agreement No. 4656; Queue No. AA1–138 to be effective 2/15/2017.

Filed Date: 3/17/17.

Accession Number: 20170317–5145.

Comments Due: 5 p.m. ET 4/7/17.

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: March 17, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–05820 Filed 3–22–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX17–3–000]

Vista Energy Storage, LLC; Notice of Filing

Take notice that on March 14, 2017, pursuant to section 211 of the Federal Power Act [1] and section 9.3.3 of the San Diego Gas & Electric Company Transmission Owner Tariff, Vista Energy Storage, LLC filed an application for order directing interconnection and transmission service and request for expedited action.

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 and 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.

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 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 4, 2017.

Dated: March 15, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–05783 Filed 3–22–17; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 824j (2012).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9959–84–OW]

Environmental Financial Advisory Committee; Request for Nominations of Candidates to the Environmental Financial Advisory Board; Reopening of Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice: Extension of nominee solicitation.

SUMMARY: The Environmental Protection Agency (EPA) issued a notice in the **Federal Register** issue of December 29, 2016 inviting qualified candidates to be considered for appointments to fill vacancies on the Environmental Financial Advisory Board (EFAB). This document extends the solicitation period for nominations to Friday, March 31, 2017. The Agency received several request to extend the nomination period to allow the new Administrator the opportunity to participate in this effort.

DATES: Nominations identified by docket identification (ID) number FRL–9957–61–OW must be received on or before March 31, 2017.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of December 29, 2017.

FOR FURTHER INFORMATION CONTACT: Submit nomination materials by electronic mail to: Alecia F. Crichlow, Membership Coordinator, Environmental Financial Advisory Board, *crichlow.alecia@epa.gov.*

SUPPLEMENTARY INFORMATION: This document extends the nomination period established in the **Federal Register** issue of December 29, 2016 (FRL–9957–61–OW) to Friday, March 31, 2017. The Environmental Financial Advisory Board was chartered in 1989 under the Federal Advisory Committee Act to provide advice and recommendations to EPA on the following issues: Reducing the cost of financing environmental facilities and discouraging polluting behavior; creating incentives to increase private investment in the provision of environmental services and removing or reducing constraints on private involvement imposed by current regulations; developing new and innovative environmental financing approaches and supporting and encouraging the use of cost-effective existing approaches; identifying approaches specifically targeted to small/disadvantaged community financing; increasing the capacity of state and local governments to carry out their respective environmental programs under current Federal tax laws; analyzing how new technologies can be brought to market expeditiously; and, increasing the total investment in environmental protection of public and private environmental resources to help ease the environmental financing challenge facing our nation.

To submit nominations, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the December 29, 2016 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 17, 2017.

Andrew Sawyer,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2017–05821 Filed 3–22–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0577; FRL–9958–13]

Product Cancellation Order for Certain Pesticide Registrations and Amendments To Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations and amendments to terminate uses, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 and Table 2 of Unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a November 18, 2016 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 3 of Unit II, to voluntarily cancel and amend to terminate uses of these product registrations.

DATES: The cancellations and amendments are effective March 23, 2017.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0577, 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.*

II. What action is the Agency taking?

In the November 18, 2016 notice, EPA indicated that it would issue an order implementing the cancellations and amendments to terminate uses, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received one comment on this notice from a registrant to withdraw one cancellation request for registration 100–1052, because it was inadvertently sent to the agency and it is not listed in this notice and will not be cancelled. Also two comments were received for the following registration numbers that were listed for product cancellation in the November 18, 2016 notice in error and are not listed in this notice, the following product registrations are not being cancelled: 2792–45, 61842–20, 61842–21, 61842–22, 61842–23, 61842–24 and 61842–32. Also, a comment was received for registration number 66222–32 that was listed in error with the incorrect product name and active ingredient, and it is not listed in this notice and will not be cancelled. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations and amendments to terminate uses. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

This notice announces the cancellations and amendments to terminate uses, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Tables 1 and 2 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredient
100–951	100	Hurricane	Metalaxyl-M & Fludioxonil.
100–1051	100	Talon-G Rodenticide Bait Pack Pellets with Bitrex.	Brodifacoum.
100–1057	100	Talon-G Rodenticide Mini-Pellets with Bitrex	Brodifacoum.
100–1064	100	Diquat Weed Killer 'D'	Diquat dibromide.
100–1095	100	Lambda-Cyhalothrin TC Insecticide	Lambda-Cyhalothrin.
100–1114	100	Rapid Kill #1	Diquat dibromide.
100–1115	100	Rapid Kill #1 Concentrate	Diquat dibromide.
100–1143	100	Touchdown Ready-To-Use Herbicide	Glyphosate.
100–1144	100	Touchdown Home and Garden Concentrate	Glyphosate.
100–1170	100	Optigard ZT Insecticide	Thiamethoxam.
100–1180	100	Touchdown Diquat Home and Garden Ready to Use.	Diquat dibromide & Glyphosate.
100–1209	100	Abamectin Granular Fire Ant Killer	Abamectin.
100–1302	100	Cypermethrin ME 2.0% Concentrate	Cypermethrin.
100–1303	100	Cypermethrin ME 0.2% RTU	Cypermethrin.
100–1329	100	Glyphosate Diquat Prodiamine EW RTU	Glyphosate, Diquat dibromide & Prodiamine.
100–1331	100	Prodiamine/Diquat/Glyphosate EW Concentrate	Diquat dibromide, Prodiamine & Glyphosate.
100–1332	100	Prodiamine/Diquat/Glyphosate EW Manufacturing Use Concentrate.	Diquat dibromide, Glyphosate & Prodiamine.
100–1355	100	Departure Herbicide	Glyphosate.
100–1393	100	Hurricane WDG	Fludioxonil & Metalaxyl-M.
100–1403	100	Glyphosate 500	Glyphosate.
100–1429	100	Foxfire Herbicide	Pinoxaden & Fenoxaprop-p-ethyl.
228–679	228	ETI 107 02 G	Paclobutrazol.
228–680	228	ETI 107 01 G	Paclobutrazol.
279–3195	279	Authority First Herbicide	Sulfentrazone.
279–3231	279	Gauntlet	Sulfentrazone & Cloransulam-methyl.
279–3247	279	Gauntlet 70 WP Herbicide	Sulfentrazone & Cloransulam-methyl.
352–713	352	DuPont Sulfentrazone XP Herbicide	Sulfentrazone.
499–497	499	Whitmire Micro-Gen TC 232	D-Limonene.
499–508	499	TC 246	Imazalil.
499–519	499	TC 232 W&H	D-Limonene.
2724–819	2724	Pyrocide Pressurized Ant & Roach Spray 70451	Propoxur, Pyrethrins, Piperonyl butoxide & MGK 264.

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name	Active ingredient
5905–583	5905	HM–0739	2,4-D, diethanolamine salt, Benzoic acid, 3,6-dichloro-2-methoxy-, compd with 2,2′-iminobis(ethanol) (1:1) & 3-Quinolinecarboxylic acid, 2-(4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl)-, monoammonium salt.
7969–341	7969	Cando Limonene Wasp & Hornet Jet Spray	D-Limonene.
7969–344	7969	Cando Limonene Indoor/Outdoor Multi-Insect Spray.	D-Limonene.
9688–307	9688	TAT Total Release Water Based Fogger	MGK 264, Tetramethrin & Esfenvalerate.
35935–101	35935	Azoxystrobin Technical	Azoxystrobin.
59639–80	59639	Valent Bolero 10 G (Herbicide)	Thiobencarb.
61282–01	61282	Technical Diphacinone	Diphacinone.
61282–03	61282	Zinc Phosphide 93	Zinc phosphide (Zn3P2).
61282–20	61282	Zinc Phosphide Corn Bait	Zinc phosphide (Zn3P2).
66330–260	66330	Flomet 4L	Fluometuron.
67760–43	67760	Cheminova Methyl Parathion 4 EC	Methyl parathion.
70506–180	70506	Accelerate a Harvest Aid for Cotton	Endothall, mono(N,N,-dimethyl alkyl amine) salt.
70506–190	70506	Desicate II	Endothall, mono(N,N,-dimethyl alkyl amine) salt.
70506–296	70506	Thinrite Blossom Thinner	Endothal-dipotassium.
70506–297	70506	UPI Captan Technical	Captan.
82437–1	82437	K & W Agrochemicals 5–15–5 with Gro-Root Liquid (GRL) Root & Transplant Stimulator with 2 Hormones.	1-Naphthaleneacetic acid & Indole-3-butyric acid.
82437–3	82437	Kingro RTU (Ready-to-use)	Cytokinin (as kinetin).
82437–4	82437	Rootaid Gel	Indole-3-butyric acid.
82437–6	82437	Prostim L	Indole-3-butyric acid & Cytokinin (as kinetin).
82437–8	82437	Prostim II	Cytokinin (as kinetin) & Indole-3-butyric acid.
88342–1	88342	Odor Rescue	Sodium chlorite.
89461–2	89461	Shiner Concentrated Shock Granules	Trichloro-s-triazinetrione.
89461–3	89461	Shiner Dichlor Shock Granules	Sodium dichloroisocyanurate dihydrate.
CO–010006	10163	Hexygon WDG	Hexythiazox.
SC–140001	59639	V–10233 Herbicide	Flumioxazin & Pyroxasulfone.
WA–060021	10163	Onager 1E	Hexythiazox.

TABLE 2—PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
100–1093	100	Heritage Fungicide	Azoxystrobin	Artichoke, Globe, Bananas, Plantains (post-harvest uses only), Barley, Canola, Carrots, Corn, Cotton, Cranberry, Grasses (grown for seed), Legume vegetables, dry and succulent, Oilseed crops, Peanuts, Potatoes, Rice, Soybean, Tobacco, Vegetable, leaves of root and tubers, Vegetable, root subgroup, Vegetable, tuberous and corm subgroup, Watercress, Wheat, Triticale & Indoor residual mold spray (use on carpet; wood and drywall; hard, non-porous surfaces).
100–1218	100	Demon Max Insecticide	Cypermethrin	Remove the directions for use for material protection. Remove the section entitled, Treatment of Preconstruction Lumber and Logs.
264–736	264	Bayleton Technical Fungicide	Triadimefon	Pineapple.
264–740	264	Bayleton 50% Concentrate	Triadimefon	Pineapple.
2792–45	2792	No Scald DPA EC–283	Diphenylamine (Not selected for InertFinder).	Pear use.
6218–45	6218	Pyrethrins Fogging Concentrate II.	MGK 264, Piperonyl butoxide & Pyrethrins.	Outdoor Use, all outdoor uses except building perimeters (spot treatments).
43410–33	43410	Chem-Tek 100	Thiabendazole	In or on paints, nylon carpeting & canvas textiles.
70506–179	70506	Ziram Manufacturing Use Product.	Ziram	Blackberries.

TABLE 2—PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES—Continued

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
85678–8	85678	Captan Technical	Captan	Turf Use.
85678–13	85678	Captan 4L	Captan	Turf Use.
85678–14	85678	Captan 80 WDG	Captan	Turf Use.
85678–28	85678	Captan Technical II	Captan	Turf Use.
87290–61	87290	Willowood Mesotrione 4SC	Mesotrione	Directions for use on soybeans.
87290–62	87290	Willowood Mesotrione 480SC	Mesotrione	Directions for use on soybeans.

Table 3 of this unit includes the names and addresses of record for all registrants of the products in Tables 1 and 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed above.

TABLE 3—REGISTRANTS OF CANCELLED AND AMENDED PRODUCTS

EPA company No.	Company name and address
100	Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
228	NuFarm Americas, Inc., 4020 Aerial Center Pkwy., Ste. 101, Morrisville, NC 27560.
264	Bayer CropScience, LP, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
352	E. I. Du Pont De Nemours and Company (S300/419), Attn: Manager, US Registration, Dupont Crop Protection, Chestnut Run Plaza, 974 Centre Road, P.O. Box 2915, Wilmington, DE 19805.
499	BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
2724	Wellmark International, 1501 E. Woodfield Road, Suite 200 West, Schaumburg, IL 60173.
2792	Decco US Post-Harvest, Inc., 1713 South California Avenue, Monrovia, CA 91016–0120.
5905	Helena Chemical Company, Agent Name: Helena Products Group, 7664 Smythe Farm Road, Memphis, TN 38120.
6218	Summit Chemical Co., 8322 Sharon Drive, Frederick, MD 21704.
7969	BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
9688	Chemsico, A Division of United Industries Corp., P.O. Box 142642, St. Louis, MO 63114–0642.
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
35935	NuFarm Limited, Agent Name: NuFarm Americas Inc., 4020 Aerial Center Pkwy., Ste. 103, Morrisville, NC 27560.
43410	Agri-Chem Consulting, Inc., 27536 CR 561, Tavares, FL 32778.
59639	Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596.
61282	Hacco, Inc., 110 Hopkins Drive, Randolph, WI 53956–1316.
66330	Arysta LifeScience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
67760	Cheminova, Inc., 1600 Wilson Blvd., Suite 700, Arlington, VA 22209.
70506	United Phosphorus, Inc., Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct. NW., Gig Harbor, WA 98332.
82437	K & W Agrichemicals, Inc., Agent Name: Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707–0640.
85678	Redeagle International LLC, Agent Name: Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707.
87290	Willowood, LLC, Agent Name: Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707–0640.
88342	CLO2 Systems, 3427 Pearl Road, Medina, OH 44256.
89461	Global Chem Tech, LLC, 34 Lake Havasu Avenue N.—14–204, Lake Havasu City, AZ 86403.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received four comments in response to the November 18, 2016 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations and amendments to terminate uses of products listed in Tables 1 and 2 of Unit II. One request was from Syngenta Crop Protection, LLC requesting that EPA Reg. No. 100–1052 be retained because the voluntary cancellation request was sent to the agency in error. A second comment was received from Decco US Post-Harvest, Inc. requesting that EPA Reg. No. 2792–45 be retained because the entry to cancel the product registration was listed in error, the registrant only voluntarily requested to amend the registration to terminate uses on pears which is accurately listed in Table 2 of Unit II. A third comment was received from Tessenderlo Kerley, Inc. requesting that EPA Reg. numbers 61842–20, 61842–21, 61842–22, 61842–23, 61842–24 and 61842–32 be retained because the entry to cancel the product registrations were listed in error. The fourth comment was received from Makhteshim Agan of North America, Inc. requesting that EPA Reg. No. 66222–32 be retained because the product registration name and active ingredient were listed incorrectly.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)(1)), EPA hereby approves the requested cancellations and amendments to terminate uses of the registrations identified in Tables 1 and 2 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Tables 1 and 2 of Unit II, are canceled and amended to terminate the affected uses. The effective date of the cancellations that are subject of this notice is March 23, 2017. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 of Unit II, in a manner inconsistent with any of the provisions for disposition of existing

stocks set forth in Unit VI. will be a violation of FIFRA.

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

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of November 18, 2016 (81 FR 81761) (FRL–9953–55). The comment period closed on December 19, 2016.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

For voluntary cancellations, the registrants may continue to sell and distribute existing stocks of products listed in Table 1 until March 23, 2018, which is 1 year after publication of this cancellation order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1 of Unit II, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Now that EPA has approved product labels reflecting the requested amendments to terminate uses, registrants are permitted to sell or distribute products listed in Table 2 of Unit II, under the previously approved labeling until September 24, 2018, a period of 18 months after publication of the cancellation order in this **Federal Register**, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated uses identified in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 24, 2017.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2017–05700 Filed 3–22–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:26 a.m. on Tuesday, March 21, 2017, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Thomas J. Curry (Comptroller of the Currency), concurred in by Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10).

Dated: March 21, 2017.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017–05890 Filed 3–21–17; 4:15 pm]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Docket No. ATSDR–2017–0003]

Proposed Substances To Be Evaluated for Set 31 Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice; request for comments.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR) located in the Department of Health and Human Services (HHS) is initiating the development of its 31st set of toxicological profiles (Set 31). Today's announcement invites voluntary public nominations of substances for profile development. ATSDR is soliciting public nominations of substances found on the Substance Priority List (SPL) at *https://www.atsdr.cdc.gov/spl.*

DATES: Comments must be submitted April 24, 2017.

ADDRESSES: You may submit nominations, identified by Docket No. ATSDR–2017–0003, by any of the following methods:

**Internet:* Access the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.

**Mail:* Division of Toxicology and Human Health Sciences, 1600 Clifton Rd. NE., MS F–57, Atlanta, GA 30329.

Instructions: All submissions must include the agency name and docket number for this notice. All relevant comments will be posted without change. This means that no confidential business information or other confidential information should be submitted in response to this notice. Refer to the section *Submission of Nominations* (below) for the specific information required.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Commander Jessilynn B. Taylor, Division of Toxicology and Human Health Sciences, 1600 Clifton Rd. NE., MS F–57, Atlanta, GA 30329, Email: *jxt1@cdc.gov;* phone: 770–488–3313.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9601 *et seq.*] amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) [42 U.S.C. 9601 *et seq.*] by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the SPL. This list identifies 275 hazardous substances that ATSDR and EPA have determined pose the most

significant current potential threat to human health. The availability of the revised list of the 275 SPL substances was announced in April, 2015 on the following Web site: *https://www.atsdr.cdc.gov/spl.*

Substances To Be Evaluated for Set 31 Toxicological Profiles

Each year, ATSDR develops a list of substances to be considered for toxicological profile development. The Set 31 nomination process includes consideration of all substances on ATSDR's SPL, as well as other substances nominated by the public. The 275 substances on the SPL will be considered for Set 31 Toxicological Profile development. This list may be found at the following Web site: *https://www.atsdr.cdc.gov/spl.*

Submission of Nominations for the Evaluation of Set 31 Proposed Substances

ATSDR also will consider the nomination of any substance that is not on the SPL under the authority of the Comprehensive, Environmental Response, Compensation, and Liability Act (CERCLA) to ''. . . establish and maintain an inventory of literature, research, and studies on the health effects of toxic substances'' under CERCLA Section 104(i)(1)(B), to respond to requests for consultation under section 104(i)(4), and to support the site-specific response actions conducted by ATSDR, as otherwise necessary.

Today's document invites voluntary public nominations for substances included on the SPL and for substances not listed on the SPL. All nominations should include the full name of the nominator, affiliation, and email address. When nominating a non-SPL substance, please include the rationale for the nomination. Please note that email addresses will not be posted in the docket found at *www.regulations.gov.*

ATSDR will evaluate all data and information associated with nominated substances and will determine the final list of substances to be chosen for toxicological profile development. Substances will be chosen according to ATSDR's specific guidelines for selection. These guidelines can be found in the *Selection Criteria* announced in the **Federal Register** on May 7, 1993 (58 FR 27286). A hard copy of the Selection Criteria is available upon request or may be accessed at: *http://www.atsdr.cdc.gov/toxprofiles/guidance/criteria_for_selecting_tp_support.pdf.*

Please ensure that your comments are submitted within the specified nomination period. Nominations received after the closing date will be marked as late and may be considered only if time and resources permit.

Pamela I. Protzel Berman,

Associate Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health, Agency for Toxic substances and Disease Registry.

[FR Doc. 2017–05736 Filed 3–22–17; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns the Centers for Disease Control and Prevention (CDC) initial review of applications in response to Funding Opportunity Announcement (FOA) GH14–002, Addressing Emerging Infectious Diseases in Bangladesh; and FOA GH16–003, Conducting Public Health Research in Thailand: Technical collaboration with the Ministry of Public Health in the Kingdom of Thailand (MOPH).

SUMMARY: This publication corrects a notice that was published in the **Federal Register** on March 9, 2017 Volume 82, Number 45, page 13119. The meeting announcement and matters for discussion should read as follows:

The meeting announced below concerns the Centers for Disease Control and Prevention (CDC) initial review of applications in response to Funding Opportunity Announcements (FOA) GH13–001, Strengthening Disease Prevention Research Capacity for Public Health Action in Guatemala and the Central American Region; FOA GH14–002, Addressing Emerging Infectious Diseases in Bangladesh; and FOA GH16–003, Conducting Public Health Research in Thailand: Technical collaboration with the Ministry of Public Health in the Kingdom of Thailand (MOPH).

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Strengthening Disease Prevention Research Capacity for Public Health Action in Guatemala and the Central American Region'', FOA GH13–001; ''Addressing Emerging Infectious Diseases in Bangladesh'', FOA GH14–002; and ''Conducting Public Health Research in Thailand: Technical collaboration with the Ministry of Public Health in the Kingdom of Thailand (MOPH)'', FOA GH16–003.

FOR FURTHER INFORMATION CONTACT: Hylan Shoob, Scientific Review Officer, Center for Global Health (CGH) Science Office, CGH, CDC, 1600 Clifton Road NE., Mailstop D–69, Atlanta, Georgia 30033, Telephone: (404) 639–4796, *HMS4@CDC.GOV.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017–05733 Filed 3–22–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC)

Notice of Cancellation: This notice was published in the **Federal Register** on March 9, 2017, Volume 82, Number 45, page 13121. The meeting previously scheduled to convene on April 12–13, 2017, has been canceled.

Contact Person for Additional Information: Nancy Anderson, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, Center for Surveillance, Epidemiology and Laboratory Services, Office of Public Health Scientific Services, CDC, 1600 Clifton Road NE., Mailstop F–11, Atlanta, Georgia 30329–4018; telephone (404) 498–2741; or via email at *NAnderson@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017–05731 Filed 3–22–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement, RFA–CE–17–002, Development and Evaluation of Sports Concussion Prevention Strategies.

Times and Dates:

8:00 a.m.–5:00 p.m., EDT, April 19, 2017 (Closed)

8:00 a.m.–5:00 p.m., EDT, April 20, 2017 (Closed)

Place: Crowne Plaza Atlanta Perimeter at Ravinia, 4355 Ashford Dunwoody Road, Atlanta, GA 30346.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Development and Evaluation of Sports Concussion Prevention Strategies'', RFA–CE–17–002.

Contact Person for More Information: Oscar Tarrago, M.D., M.P.H., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F63, Atlanta, Georgia 30341–3724, Telephone: (770) 488–3492.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017–05732 Filed 3–22–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA) DD17–001, Coordinating Center for Research to Promote the Health of Children with Birth Defects and People with Developmental and Other Disabilities.

Time and Date: 11:00 a.m.–6:00 p.m., EDT, April 19, 2017 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Coordinating Center for Research to Promote the Health of Children with Birth Defects and People with Developmental and Other Disabilities'', FOA DD17–001.

Contact Person for More Information: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017–05734 Filed 3–22–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of application in response to Funding Opportunity Announcement (FOA) PAR15–353, Centers for Agricultural Safety and Health.

Times and Dates:

6:30 p.m.–8:00 p.m., EDT, April 19, 2017 (Closed)

8:00 a.m.–6:00 p.m., EDT, April 20, 2017 (Closed)

8:00 a.m.–6:00 p.m., EDT, April 21, 2017 (Closed)

Place: AC Hotel Atlanta Buckhead at Phipps Plaza, 3600 Wieuca Rd. NE., Atlanta, GA 30326 Telephone: (470) 231–3030.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Centers for Agricultural Safety and Health'', PAR15–353.

Contact Person for More Information: Michael Goldcamp, Ph.D., Scientific Review Officer, CDC, 1095 Willowdale Road, Morg Bldg. H, Room 1806, Mailstop 1808, Morgantown, WV Telephone: (304) 285–5951, *EHG8@CDC.GOV*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017–05735 Filed 3–22–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.676]

Announcement of the Award of One Single-Source Expansion Supplement Grant Within the Office of Refugee Resettlement's Unaccompanied Children's Program

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

ACTION: Notice of Award of one single-source expansion supplement grant under the Unaccompanied Children's (UC) Program.

SUMMARY: ACF, ORR, announces the award of one single-source expansion supplement grant for a total of $1,768,571 under the UC Program.

DATES: Expansion supplement grants will support activities from February 1, 2017, through March 31, 2017.

FOR FURTHER INFORMATION CONTACT: Jallyn Sualog, Director, Division of Children's Services, Office of Refugee Resettlement, 330 C Street SW., Washington, DC 20201. Email: *DCSProgram@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following supplement grant will support the immediate need for additional capacity of shelter services to accommodate the increasing number of UC referred by the Department of Homeland Security (DHS) into ORR care. The increase in the UC population necessitates the need for expansion of services to expedite the release of UC. In order to be prepared for an increase in referrals for shelter services, ORR will solicit proposals from one grantee to accommodate the extensive amount of referrals from DHS.

Grantee	Grant No.	Proposed period of support start date	Proposed period of support end date	Number of days	Number of shelter beds	Award amount
International Educational Services, Inc ...	90ZU0119	2/1/2017	3/31/2017	59	100	$1,768,571
Total	.....	.....	.....	.....	.....	1,768,571

ORR has specific requirements for the provision of services. Award recipients must have the infrastructure, licensing, experience, and appropriate level of trained staff to meet those requirements. The expansion of the existing shelter services program through this supplemental award is a key strategy for ORR to be prepared to meet its responsibility of safe and timely release of UC referred to its care by DHS and so that the U.S. Border Patrol can continue its vital national security mission to prevent illegal migration and trafficking, and protect the borders of the United States.

Statutory Authority: This program is authorized by—

(A) Section 462 of the Homeland Security Act of 2002, which in March 2003, transferred responsibility for the care and custody of Unaccompanied Alien Children from the Commissioner of the former Immigration and Naturalization Service (INS) to the Director of ORR of HHS.

(B) The Flores Settlement Agreement, Case No. CV85–4544RJK (C.D. Cal. 1996), as well as the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Pub. L. 110–457), which authorizes post release services under certain conditions to eligible children. All programs must comply with the Flores Settlement Agreement, Case No. CV85–4544–RJK (C.D. Cal. 1996), pertinent regulations and ORR policies and procedures.

Elizabeth Leo,

Grants Policy Specialist, Division of Grants Policy, Office of Administration, Administration for Children and Families.

[FR Doc. 2017–05746 Filed 3–22–17; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–1003]

Center for Devices and Radiological Health: Experiential Learning Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration's (FDA) Center for Devices and Radiological Health (CDRH or Center) is announcing the 2017 Experiential Learning Program (ELP). This training component is intended to provide CDRH staff with an opportunity to understand the policies, laboratory practices, patient perspective/input, quality system management, and other challenges that impact the device development life cycle. The purpose of this document is to invite medical device industry, academia, and health care facilities, and others to participate in this formal training program for CDRH's employees, or to contact CDRH for more information regarding the ELP.

DATES: Submit either electronic or written requests for participation in the ELP by dates specified in the ELP Web site at: *http://www.fda.gov/scienceresearch/sciencecareeropportunities/ucm380676.htm.*

ADDRESSES: Submit either electronic requests to *https://www.regulations.gov* or written requests to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify requests with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Christian Hussong, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5261, Silver Spring, MD 20993–0002, 240–402–2246, *Christian.Hussong@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

CDRH is responsible for helping to ensure the safety and effectiveness of medical devices marketed in the United States. Furthermore, CDRH assures that patients and providers have timely and continued access to high-quality, safe, and effective medical devices. For 2016–2017, CDRH has identified Partnering with Patients and Promoting a Culture of Quality and Organizational Excellence as strategic priorities, specifically having the perspective of our stakeholders and understanding implementation of these within their

institutions would provide great insight to FDA review staff. The Center encourages applicants to consider including opportunities to discuss patient perspective and meeting the challenges of quality systems design and management as they contribute to the success of the device development life cycle.

CDRH is committed to advancing regulatory science, providing industry with predictable, consistent, transparent, and efficient regulatory pathways, and helping to ensure consumer confidence in medical devices marketed in the United States and throughout the world. The ELP is intended to provide CDRH staff with an opportunity to understand the policies, laboratory and manufacturing practices, and the challenges addressing patient perspective/input, quality system management, and other challenges that impact the device development life cycle. This component is a collaborative effort to enhance communication and facilitate the premarket review process. The Center is committed to understanding current industry practices, innovative technologies, regulatory impacts and needs, and how patient perspective and quality systems management advances the development and evaluation of innovative devices, and to monitoring the performance of marketed devices.

These formal training visits are not intended for FDA to inspect, assess, judge, or perform a regulatory function (*e.g.,* compliance inspection), but rather, they are an opportunity to provide CDRH review staff a better understanding of the products they review, how they are developed, the voice of the patient, challenges related to quality systems development and management in the product life cycle, and how medical devices fit into the larger health care system. CDRH is formally requesting participation from companies, academia, and clinical facilities, medical device incubators and accelerators, health insurers, health technology assessment groups, and others, including those that have previously participated in the ELP or other FDA site visit programs.

CDRH encourages applicants to consider including opportunities to discuss how patient perspective and effective quality systems management contribute to the success of the device development life cycle. Additional information regarding the CDRH ELP, including the table of areas of interest, submission dates and deadlines, a sample request, and an example of the site visit agenda, is available on CDRH's Web site at: *http://www.fda.gov/scienceresearch/sciencecareeropportunities/ucm380676.htm.* The Center encourages applicants to consider including opportunities to discuss patient perspective and meeting the challenges of Quality Systems Design and Management as they contribute to the success of the device development life cycle.

II. CDRH ELP

A. Areas of Interest

In this training program, groups of CDRH staff will observe operations in the areas of research, device development, in making coverage decisions and assessments, incorporating patient information and reimbursement, manufacturing, academia, and health care facilities. The areas of interest for visits include various topics identified by managers at CDRH. These areas of interest are listed publicly and are intended to be updated quarterly.

To submit a proposal addressing one of the Center's training needs, visit the link for the table of areas of interest to be addressed at: *http://www.fda.gov/ScienceResearch/ScienceCareerOpportunities/UCM380676.htm*

Once you have determined an area of interest to address in your ELP proposal, follow the instructions in section III to properly fill out the site visit request template and agenda provided at: *http://www.fda.gov/downloads/ScienceResearch/ScienceCareerOpportunities/UCM392988.pdf* and at: *http://www.fda.gov/downloads/ScienceResearch/ScienceCareerOpportunities/UCM487190.pdf.*

B. Site Selection

CDRH will be responsible for CDRH staff travel expenses associated with the site visits. CDRH will not provide funds to support the training provided by the site to the ELP. Selection of potential facilities will be based on CDRH's priorities for staff training and resources available to fund this program. In addition to logistical and other resource factors, all sites must have a successful compliance record with FDA or another Agency with which FDA has a memorandum of understanding (if applicable). If a site visit involves a visit to a separate physical location of another firm under contract with the site, that firm must agree to participate in the ELP and must also have a satisfactory compliance history, and must be listed in the proposal along with a Facility Establishment Identifier number (FEI #) if applicable.

III. Request to Participate

Submit proposals for participation with the docket number found in the brackets in the heading of this document. Received requests may be seen in the Division of Dockets Management (see ADDRESSES) between 9 a.m. and 4 p.m., Monday through Friday.

Additional information regarding the CDRH ELP, including a sample request and an example of a site visit agenda and submission deadlines, is available on CDRH's Web site at: *http://www.fda.gov/scienceresearch/sciencecareeropportunities/ucm380676.htm.*

Dated: March 17, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–05763 Filed 3–22–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–0198]

Delayed Graft Function in Kidney Transplantation: Developing Drugs for Prevention; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Delayed Graft Function in Kidney Transplantation: Developing Drugs for Prevention.'' The purpose of this guidance is to assist sponsors in the clinical development of drugs for the prevention of delayed graft function (DGF) in kidney transplantation.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by June 21, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2017–D–0198 for ''Delayed Graft Function in Kidney Transplantation: Developing Drugs for Prevention; Draft Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

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

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Ozlem Belen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 22, Rm. 6118, Silver Spring, MD 20993–0002, 301–796–0676.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Delayed Graft Function in Kidney Transplantation: Developing Drugs for Prevention.'' The purpose of this guidance is to assist sponsors in the clinical development of drugs for the prevention of DGF in kidney transplantation.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on developing drugs for the prevention of DGF in kidney transplant. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: March 20, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–05818 Filed 3–22–17; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Oncology 1 Basic Translational.

Date: April 6, 2017.

Time: 1:00 p.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: Amy L. Rubinstein, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7844, Bethesda, MD 20892, 301–408–9754, *rubinsteinal@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: March 17, 2017.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–05750 Filed 3–22–17; 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 (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Loan Repayment Program.

Date: April 18, 2017.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3An.12N, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Manas Chattopadhyay, Ph.D., Scientific Review Officer, National Institute of General Medical Sciences, National Institute of Health, Building 45, Room 3An12N, 45 Center Drive, Bethesda, MD 20892, 301–827–5320, *manasc@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: March 15, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–05587 Filed 3–22–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: International and Cooperative Projects 1.

Date: April 6, 2017.

Time: 9:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian H. Scott, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–7490, *brianscott@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and Related Research.

Date: April 7, 2017.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Voice Production.

Date: April 11, 2017.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodevelopmental Disorders.

Date: April 13, 2017.

Time: 10:00 a.m. to 12:01 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; Member Conflict: Neuroendocrinology, Sleep, Stress, and Alcohol.

Date: April 14, 2017.

Time: 9:00 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: Nicholas Gaiano, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892–7844, 301–435–1033, *gaianonr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Aging Related Discords, Human and Animal Studies.

Date: April 14, 2017.

Time: 11:00 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: 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; Member Conflict: Vascular and Renal Biology.

Date: April 18, 2017.

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 (Telephone Conference Call).

Contact Person: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.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: March 17, 2017.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–05751 Filed 3–22–17; 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 (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Provocative Question #5.

Date: April 18, 2017.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 4W030, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Eduardo E. Chufan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W254, Bethesda, MD 20892–9750, 240–276–7975, *chufanee@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Biospecimen IMAT Research.

Date: April 19, 2017.

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 7W106, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Reed A. Graves, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W106, Bethesda, MD 20892–9750 240–276–6384, *gravesr@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project II (P01).

Date: June 8–9, 2017.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Anita T. Tandle, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, MD 20892–9750, 240–276–5007, *tandlea@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE II (P50).

Date: June 22–23, 2017.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Rockville, MD 20892–9750, 240–276–6457, *mh101v@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 17, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–05752 Filed 3–22–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4297–DR; Docket ID FEMA–2017–0001]

Georgia; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–4297–DR), dated January 26, 2017, and related determinations.

DATES: Effective February 15, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 26, 2017.

Colquitt County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–05578 Filed 3–22–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0046]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Inter-Agency Alien Witness and Informant Record

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until May 22, 2017.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0046 in the body of the letter, the agency name and Docket ID USCIS–2006–0062. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0062;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0062 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the form/collection:* Inter-Agency Alien Witness and Informant Record; Agency Alien Witness and Informant Adjustment of Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–854A; Form I–854B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. Form I–854 is used by law enforcement agencies to bring alien witnesses and informants to the United States in ''S'' nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–854A is 150 and the estimated hour burden per response is 3 hours. The estimated total number of respondents for the information collection I–854B is 150 and the estimated hour burden per response is 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 600 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Dated: March 17, 2017.

Jerry Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2017–05762 Filed 3–22–17; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2016–N223]; [FXES11140400000–178–FF04E00000]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit Application and Environmental Assessment for Commercial Mixed-Use Development; Miami-Dade County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: Under the Endangered Species Act of 1973, as amended (Act),

we, the U.S. Fish and Wildlife Service, announce the receipt and availability of a proposed habitat conservation plan and accompanying documents related to an application from four applicants for a permit associated with construction of the Coral Reef Commons mixed-use development (project) in Miami-Dade County, Florida. If issued, the permit would authorize take of three federally listed species, one Federal candidate, and two State-listed species, incidental to project development, occupation, and use. We invite the public to comment on these documents.

DATES: To ensure consideration, please send your written comments by May 22, 2017.

ADDRESSES: *Obtaining Documents:* Documents are available for public inspection by appointment during regular business hours at either of the following locations:

- Atlanta Regional Office, Ecological Services, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345.
- South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960.

Submitting Comments: Submit comments by one of the following methods. Please reference TE15009C–0 in all comments. For additional guidance, please see Public Comments under **SUPPLEMENTARY INFORMATION**.

U.S. mail: You may mail comments to the Fish and Wildlife Service's Atlanta Regional Office.

Hand-delivery: You may hand-deliver comments to the Atlanta or the Vero Beach Office.

Email: You may email comments to *david_dell@fws.gov*. Please include your name and return address in your email message. If you do not receive a confirmation from us that we have received your email message, contact us directly at either telephone number in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, Atlanta (see **ADDRESSES**), telephone: 404–679–7313; or Ashleigh Blackford, Supervisory Wildlife Biologist, at the South Florida Ecological Services Office (see **ADDRESSES**), telephone: 772–469–4246. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Under the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service, announce the receipt and availability of a proposed habitat conservation plan (HCP), accompanying incidental take permit (ITP) application, and environmental assessment (EA) related to an application from Coral Reef Retail LLC, Coral Reef Residential Phase I LLC, Ramdev LLC, and the University of Miami (applicants) for a permit associated with construction of the Coral Reef Commons mixed-use development (project) in Miami-Dade County, Florida. We invite the public to comment on these documents.

The applicants' proposed HCP describes the mitigation and minimization measures proposed to address the impacts to the covered species. Per the National Environmental Policy Act (42 U.S.C. 4321 *et seq.;* NEPA), the EA analyzes the take of the covered species and the environment. The applicants request a 30-year ITP under section 10(a)(1)(B) of the Act, as amended (16 U.S.C. 1531 *et seq.*).

Covered Species

The covered species are the following:

Federally listed as endangered: Bartram's scrub-hairstreak butterfly (*Strymon acis bartrami*), Florida leafwing butterfly (*Anaea troglodyta floridalis*), Florida bonneted bat (*Eumops floridanus*), and Miami tiger beetle (*Cicindela scabrosa floridana*).

Federally listed as threatened: Eastern indigo snake (*Drymarchon corais cooperi*).

Federal candidate: Gopher tortoise (*Gopherus polyphemus*).

State-listed: Rim rock crowned snake (*Tantilla oolitica*) and white-crowned pigeon (*Patagioenas leucocephala*).

Because the project would likely have adverse effects on several plant species, the HCP includes conservation measures for the following plant species:

Federally listed as endangered: Tiny polygala (*Polygala smallii*), deltoid spurge (*Chamaesyce deltoidea*), crenulate lead-plant (*Amorpha crenulata*), Florida brickell bush (*Brickelia mosieri*), Small's milkpea (*Galactia smallii*), and Carter's small-flowered flax (*Linum carteri* var. *carteri*).

Federally listed as threatened: Garber's spurge (*Chamaesyce garberi*).

Federal candidates: Sand flax (*Linum arenicola*), Blodgett's silver bush (*Argythamnia blodgettii*), Florida prairie clover (*Dalea carthagenensis* var. *floridana*), Florida pineland crabgrass (*Digitaria pauciflora*), Everglades bully (*Sideroxylon reclinatum* ssp. *austrofloridense*), and Florida bristle fern (*Trichomanes punctatum* ssp. *floridanum*).

State-listed: Clamshell orchid (*Encyclia cochleata* var. *triandra*).

Environmental Assessment

The EA assesses the likely environmental impacts associated with the project, including the environmental consequences of the no-action and the proposed action alternatives. The proposed action alternative is issuance of the ITP and implementation of the HCP as submitted by the applicants. The HCP area is comprised of a 137.9-acre tract, of which 86.49 acres are proposed for development, in addition to a separate 50.96-acre tract proposed for off-site mitigation. These tracts lie in an area known as the Richmond Pine Rocklands. Construction of the project would impact 86.49 acres of pine rockland habitat and would take covered species that occupy the area.

Habitat Conservation Plan

The minimization and mitigation measures proposed in the HCP include the setting aside and maintenance of 51.41 acres of conservation areas within the 137.9-acre tract, supplemented by 3.88 acres of intermediate conservation ''stepping stones'' to provide for movement of covered species among the conservation areas. In addition to the conservation areas, the 50.96-acre tract would serve as off-site mitigation and be protected and maintained as habitat for the covered species. The conservation and off-site mitigation areas would be managed by prescribed fire, other vegetation control measures, and removal of exotic invasive species. The areas also would be protected, as appropriate, by association covenants, deed restrictions, and/or conservation easements.

Public Comments

We specifically request information, views, and opinions from the public on our proposed Federal action, including identification of any other aspects of or impacts to the human environment not already identified in the EA prepared pursuant to the NEPA regulations at 40 CFR 1506.6. Further, we specifically solicit information regarding the adequacy of the HCP per 50 CFR parts 13 and 17.

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.

Covered Area

The covered species historically occurred in the Richmond pine rockland habitats. Portions of the HCP covered area consist of pine rockland habitat that is either currently occupied by the covered species or suitable for restoration as habitat for the species.

Next Steps

We will evaluate the ITP application, including the HCP, and any comments we receive to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether a section 10(a)(1)(B) ITP should be issued, as well as conduct an intra-Service consultation pursuant to section 7 of the Act. We will use the results of this consultation and the above findings in our final analysis to determine whether to issue the ITP. If we determine that the requirements are met, we will issue the ITP for incidental take of the covered species.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: March 3, 2017.

Mike Oetker,

Acting Regional Director.

[FR Doc. 2017–05767 Filed 3–22–17; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Extension of Tribal-State Class III Gaming Compact (Crow Creek Sioux Tribe and the State of South Dakota)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the extension of the Class III gaming compact between the Crow Creek Sioux Tribe and the State of South Dakota.

DATES: Effective March 23, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: An extension to an existing tribal-state Class III gaming compact does not require approval by the Secretary if the extension does not modify any other terms of the compact. 25 CFR 293.5. The Crow Creek Sioux Tribe and the State of South Dakota have reached an agreement to extend the expiration of their existing Tribal-State Class III gaming compact until June 28, 2017. This publishes notice of the new expiration date of the compact.

Dated: March 13, 2017.

Michael S. Black,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2017–05813 Filed 3–22–17; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/A0A501010.999900 253G]

Cowlitz Indian Tribe Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the liquor ordinance of the Cowlitz Indian Tribe. The liquor ordinance regulates and controls the possession, sale, manufacture, and distribution of alcohol in conformity with the laws of the State of Washington. Enactment of this ordinance will help provide a source of revenue to strengthen Tribal government, provide for the economic viability of Tribal enterprises, and improve delivery of Tribal government services.

DATES: This code shall become effective March 23, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Norton, Tribal Government Specialist, Northwest Regional Office, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, Oregon 97232, Telephone: (503) 231–6702, Fax: (503) 231–2201.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Tribal Council of the Cowlitz Indian Tribe duly adopted the Cowlitz Tribal Liquor Ordinance on October 27, 2016.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Tribal Council of the Cowlitz Indian Tribe duly adopted the Cowlitz Tribal Liquor Ordinance by Ordinance No. 16–02 dated October 27, 2016.

Dated: March 15, 2017.

Michael S. Black,

Acting Assistant Secretary—Indian Affairs.

SECTION 1.—INTRODUCTION

1.1 Authority

This ordinance is enacted pursuant to the Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. 1161, by the authority of the Cowlitz Tribal Council enumerated in Article VIII of the Constitution of the Cowlitz Tribe of Indians to enact legislation and regulate activities of businesses operating on the Tribe's lands, and in conformity with applicable Washington State laws and all attendant agreements with the State of Washington.

1.2 Purpose

The purpose of this ordinance is to regulate and control the possession, sale, manufacture, and distribution of liquor within the Tribe's reservation, trust lands, and all Indian Country as defined in 18 U.S.C. 1151, in order to permit alcohol sales by tribally owned and operated enterprises and lessees and at other tribally approved special events. The enactment of this ordinance will increase the ability of the Cowlitz Tribe to control the manufacture, distribution, sale, and possession of liquor on the Tribe's lands and will provide an important source of revenue for the continued operation and strengthening of the Cowlitz tribal government, the delivery of tribal governmental services, and the economic viability of tribal enterprises.

1.3 Short Title

This shall be known as the ''Cowlitz Tribal Liquor Ordinance'' and shall be codified as Ordinance No. 16–02 of the Cowlitz Tribal Code.

1.4 Jurisdiction

This ordinance shall apply to all lands now or in the future under the governmental authority of the Tribe, including the Tribe's reservation, trust lands, and Indian Country as defined under 18 U.S.C. 1151.

1.5 Application of 18 U.S.C. 1161

By adopting this Ordinance, the Tribe hereby regulates the sale, manufacturing, distribution, possession, and consumption of liquor while ensuring that such activity conforms with applicable laws of the State of Washington as required by 18 U.S.C. 1161 and the United States.

1.6 Declaration of Public Policy; Findings

The Tribal Council enacts this Ordinance, based on the following findings:

(a) The manufacture, distribution, possession, sale, and consumption of liquor in the Tribe's Indian Country are matters of special concern to the Tribe.

(b) Federal law currently prohibits the introduction of liquor into or manufacture of spirits in Indian Country, except as provided in 18 U.S.C. 1161, except in accordance with State law and the duly enacted law of the Tribe.

(c) The Cowlitz Tribe recognizes that a need exists for strict tribal regulation and control over liquor transactions within its lands because of the many potential problems associated with the unregulated or inadequately regulated manufacture, distribution, sale, possession, and consumption of liquor. The Tribal Council finds that tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the Tribe, to protect the health and welfare of tribal members, and to address specific concerns relating to alcohol use on tribal lands.

(d) It is in the best interests of the Tribe to enact an ordinance governing liquor transactions on its lands.

SECTION 2.—DEFINITIONS

2.1 Definitions

As used in this ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) ''Alcohol'' means that substance known as ethyl alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance from whatever source or by whatever process produced.

(b) ''Beer'' means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this ordinance, any such beverage containing more than eight percent of alcohol by weight shall be referred to as ''strong beer.''

(c) ''Indian Country'' means the Tribe's reservation, trust lands, and all other lands as defined in 18 U.S.C. 1151.

(d) ''Liquor'' includes the four varieties of liquor herein defined (alcohol, spirits, wine, and beer), includes all fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not containing alcohol, spirits, wine, or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight. ''Malt Liquor'' means beer, strong beer, ale, stout and porter.

(e) ''Sale'' and ''Sell'' includes exchange, barter and traffic; and also includes the selling or supplying or distributing by any means whatsoever of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

(f) ''Spirits'' means any beverage, which contains alcohol obtained by distillation, including wines exceeding twenty-four percent of alcohol by weight.

(g) ''State'' means the State of Washington.

(h) ''Tribal Council'' means the Cowlitz Tribal Council, which is the governing body of the Tribe.

(i) ''Tribe'' means the Cowlitz Indian Tribe, a federally recognized sovereign Indian tribe.

(j) ''Wine'' means any alcoholic beverage obtained by fermentation of fruits, (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this ordinance, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as ''table wine,'' and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as ''fortified wine.'' However, ''fortified wine'' shall not include: (i) Wines that are both sealed or capped by cork closure and aged two years or more; and (ii) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

SECTION 3.—LIQUOR SALES, POSSESSION, AND MANUFACTURE

3.1 Possession

The introduction and possession of liquor shall be lawful within Indian Country, provided that such introduction or possession is in conformity with the laws of the Tribe and the applicable laws of and the Tribe's agreements with the State.

3.2 Retail Sales

The sale of liquor shall be lawful within Indian Country, provided that such sales are in conformity with the laws of the Tribe and the applicable laws of and agreements with the State.

3.3 Manufacture

The manufacture of liquor shall be lawful within Indian Country, provided that such manufacture is in conformity with the laws of the Tribe and the applicable laws of and agreements with the State.

3.4 Age Limits

The legal age for possession or consumption of alcohol within Indian Country shall be the same as that of the State, which is currently 21 years. No person under the age of 21 years of age shall purchase, possess, or consume any liquor.

SECTION 4.—LICENSING

4.1 Licensing

The Tribal Council shall have the power to establish procedures and standards for tribal licensing of liquor manufacture, distribution, and sale within Indian Country, including the setting of a license fee schedule, and shall have the power to publish and enforce such standards. For license applicants that are not tribally owned, no tribal license shall issue except upon showing of satisfactory proof that the applicant is duly licensed by the State. The fact that an applicant for a tribal license possesses a license issued by the State however shall not provide the applicant with an entitlement to a tribal license.

SECTION 5.—ENFORCEMENT

5.1 Enforcement

The Tribal Council shall have the power to develop, enact, promulgate, and enforce regulations as necessary for the enforcement of this Ordinance and to protect the public health, welfare, and safety of the Tribe, provided that all such regulations shall conform to and not be in conflict with any applicable tribal, Federal, or State law. Regulations enacted pursuant to this Ordinance may include provisions for suspension or revocation of tribal liquor licenses, reasonable search and seizure provisions, and civil and criminal penalties for violations of this Ordinance to the full extent permitted by Federal law and consistent with due process.

Tribal law enforcement personnel and security personnel duly authorized by the Tribal Council shall have the authority to enforce this Ordinance by confiscating any liquor sold, possessed, distributed, manufactured, or introduced within Indian Country in violation of this Ordinance or of any regulations duly adopted pursuant to this Ordinance.

The Tribal Council shall have the exclusive jurisdiction to hold hearings on violations of this Ordinance and any procedures or regulations adopted pursuant to this Ordinance; to promulgate appropriate procedures governing such hearings; to determine and enforce penalties or damages for violations of this Ordinance; and to delegate to a subordinate hearing officer or panel or to the Cowlitz Tribal Court the authority to take any or all of the foregoing actions on its behalf.

SECTION 6.—TAXATION

6.1 Taxation

Nothing contained in this Statute is intended to, nor does in any way, limit or restrict the Tribe's ability to impose any tax upon the sale or consumption of alcohol. The Tribe retains the right to impose such taxes by appropriate statute to the full extent permitted by Federal law.

SECTION 7.—MISCELLANEOUS PROVISIONS

7.1 Sovereign Immunity Preserved

Nothing contained in this Ordinance is intended to, nor does in any way, limit, alter, restrict, or waive the sovereign immunity of the Tribe or any of its agencies, agents, or officials from unconsented suit or action of any kind.

7.2 Conformance With Applicable Laws

All acts and transactions under this Ordinance shall be in conformity with the laws of the State to the extent required by 18 U.S.C. 1161 and with all Federal laws regarding liquor in Indian Country.

7.3 Effective Date

This Ordinance shall be effective as of the date on which the Secretary of the Interior certifies this Statute and publishes the same in the **Federal Register**.

7.4 Repeal of Prior Acts

All prior enactments of the Tribal Council, including tribal resolutions, policies, regulations, or statutes pertaining to the subject matter set forth in this Ordinance are hereby rescinded.

7.5 Amendments

This Ordinance may only be amended pursuant to an amendment duly enacted by the Tribal Council and certification by the Secretary of the Interior and publication in the **Federal Register**, if required.

7.6 Severability and Savings Clause

If any part or provision of this Ordinance is held invalid, void, or unenforceable by a court of competent jurisdiction, such adjudication shall not be held to render such provisions inapplicable to other persons or circumstances. Further, the remainder of the Ordinance shall not be affected and shall continue to remain in full force and effect.

[FR Doc. 2017–05815 Filed 3–22–17; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Extension of Tribal-State Class III Gaming Compact (Rosebud Sioux Tribe and the State of South Dakota)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the extension of the Class III gaming compact between the Rosebud Sioux Tribe and the State of South Dakota.

DATES: Effective March 23, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: An extension to an existing tribal-state Class III gaming compact does not require approval by the Secretary if the extension does not modify any other terms of the compact. 25 CFR 293.5. The Rosebud Sioux Tribe and the State of South Dakota have reached an agreement to extend the expiration date of their existing Tribal-State Class III gaming compact to July 31, 2017. This publishes notice of the new expiration date of the compact.

Dated: March 13, 2017.

Michael S. Black,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2017–05814 Filed 3–22–17; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–17–011]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 28, 2017 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. *Agendas for future meetings:* None.

2. Minutes.

3. Ratification List.

4. Vote in Inv. Nos. 701–TA–318 and 731–TA–538 and 561 (Fourth Review) (Sulfanilic Acid from China and India). The Commission is currently scheduled to complete and file its determinations and views of the Commission by April 17, 2017.

5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 21, 2017.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2017–05892 Filed 3–21–17; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–17–012]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 30, 2017 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–1314 (Final) (Phosphor Copper from Korea). The Commission is currently scheduled to complete and file its determination and views of the Commission by April 17, 2017.
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 21, 2017.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2017–05893 Filed 3–21–17; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: Registrants listed below have applied for and been granted registration by the Drug Enforcement Administration (DEA) as bulk manufacturers of various classes of controlled substances.

SUPPLEMENTARY INFORMATION:

The companies listed below applied to be registered as manufacturers of various basic classes of controlled substances. Information on previously published notices is listed in the table below. No comments or objections were submitted for these notices.

Company	FR docket	Published
Noramco, Inc	81 FR 57936	August 24, 2016.
Isosciences	81 FR 61249	September 6, 2016.
AMRI Rensselaer, Inc	81 FR 61250	September 6, 2016.
Halo Pharmaceutical, Inc	81 FR 63220	September 14, 2016.
AMPAC Fine Chemicals LLC	81 FR 63222	September 14, 2016.
Insys Manufacturing LLC	81 FR 63221	September 14, 2016.
Patheon API Manufacturing, Inc	81 FR 64509	September 20, 2016.
Euticals Inc	81 FR 64510	September 20, 2016.
Nanosyn, Inc	81 FR 64949	September 21, 2016.
Cerilliant Corporation	81 FR 66079	September 26, 2016.
Research Triangle Institute	81 FR 91948	December 19, 2016.
Synthcon LLC	81 FR 95641	December 28, 2016.
Navinta LLC	81 FR 95640	December 28, 2016.
Johnson Matthey, Inc	81 FR 95647	December 28, 2016.
AMRI Rensselaer, Inc	81 FR 95639	December 28, 2016.
Cayman Chemical Company	81 FR 95644	December 28, 2016.
Cambridge Isotope Laboratories	81 FR 95644	December 28, 2016.
Janssen Pharmaceutical, Inc	81 FR 96045	December 29, 2016.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of these registrants to manufacture the applicable basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each of the company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the DEA has granted a registration as a bulk manufacturer to the above listed persons.

Dated: March 17, 2017.

Louis J. Milione,

Assistant Administrator.

[FR Doc. 2017–05727 Filed 3–22–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: Registrants listed below have applied for and been granted registration by the Drug Enforcement Administration (DEA) as importers of various classes of schedule I or II controlled substances.

SUPPLEMENTARY INFORMATION: The companies listed below applied to be registered as importers of various basic classes of controlled substances. Information on previously published notices is listed in the table below. No comments or objections were submitted and no requests for hearing were submitted for these notices.

Company	FR docket	Published
Fisher Clinical Services, Inc	81 FR 61248	September 6, 2016.
Sigma-Aldrich International:		
GMBH-Sigma Aldrich Company LLC	81 FR 63223	September 14, 2016.
Fisher Clinical Services, Inc	81 FR 68455	October 4, 2016.
Anderson Brecon, Inc	81 FR 71766	October 18, 2016.
Johnson Matthey Inc	81 FR 71766	October 18, 2016.
Wildlife Laboratories, Inc	81 FR 95644	December 28, 2016.
Noramco, Inc	81 FR 95640	December 28, 2016.
Mylan Technologies, Inc	82 FR 7859	January 23, 2017.

The DEA has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of the listed registrants to import the applicable basic classes of schedule I or II controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the DEA has granted a registration as an importer for schedule I or II controlled substances to the above listed persons.

Dated: March 17, 2017.

Louis J. Milione,

Assistant Administrator.

[FR Doc. 2017–05730 Filed 3–22–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Wildlife Laboratories, 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 1301.34(a) on or before April 24, 2017. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before April 24, 2017.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/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 Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on February 2, 2017, Wildlife Laboratories, Inc., 1230 W. Ash Street, Suite D, Windsor, Colorado 80550–8055 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Etorphine (except HCl)	9056	I
Etorphine HCl	9059	II
Thiafentanil	9729	II

The company plans to import the listed controlled substances for sale to its customers.

Dated: March 17, 2017.

Louis J. Milione,

Assistant Administrator.

[FR Doc. 2017–05729 Filed 3–22–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Federal-State Unemployment Insurance Program Data Exchange Standardization

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Federal-State Unemployment Insurance Program Data Exchange Standardization,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 24, 2017.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201703-1205-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Federal-State Unemployment Insurance Program Data Exchange Standardization information collection requirements codified in regulations 20 CFR parts 619 and 625. The Middle Class Tax Relief and Job Creation Act of 2012 required the ETA to use eXtensible Markup Language as a data exchange standard. The regulatory provisions require a State to implement this standard for automated systems that exchange electronic information to support the Unemployment Insurance system. These automated systems, developed through a collaborative effort with states and the National Association of Workforce Agencies, have replaced manual paper processing with automated exchanges of information between states as well as those between states and employers. Social Security Act section 911authorizes this information collection. *See* 42 U.S.C. 1111.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0510.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on March 31, 2017. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 2, 2016 (81 FR 60747).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0510. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Federal-State Unemployment Insurance Program Data Exchange Standardization.

OMB Control Number: 1205–0510.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 53.

Total Estimated Annual Time Burden: 6,360 hours.

Total Estimated Annual Other Costs Burden: $1,057,329.

Dated: March 17, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017–05772 Filed 3–22–17; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

NAME AND COMMITTEE CODE: Advisory Committee for Engineering #1170.

DATE AND TIME: April 18, 2017; 12:15 p.m. to 5:30 p.m. April 19, 2017; 8:30 a.m. to 12:50 p.m.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

TYPE OF MEETING: Open.

CONTACT PERSON: Evette Rollins, National Science Foundation, 4201 Wilson Boulevard, Suite 505, Arlington, Virginia 22230; 703–292–8300.

PURPOSE OF MEETING: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda

Tuesday, April 18, 2017

- Directorate for Engineering Report
- Reports from Advisory Committee Liaisons
- Perspective from the Director's Office
- Break-out Session: Innovation and Entrepreneurship in EFRI, PFI and I-Corps
- Report from Break-out Session

Wednesday, April 19, 2017

- *Joint Session:* Engineering (ENG) and Advisory Committee for Cyberinfrastructure (ACCI)
- Advanced Cyberinfrastructure to Support Research: Program Direction, Opportunities, and Challenges

- Engineering Challenges and Cyberinfrastructure: Today and Tomorrow
- Moderated Discussion: Future Cyberinfrastructure Strategy and Needs
- Paths Forward Based on ENG–ACCI Discussion
- NSF Big Ideas: Harnessing the Data Revolution
- Roundtable on Strategic Recommendations for ENG

Dated: March 20, 2017.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2017–05773 Filed 3–22–17; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Biological Sciences (#1110).

Date and Time: April 25, 2017; 8:30 a.m.–5:00 p.m., April 26, 2017; 8:30 a.m.–12:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

Please contact Rachel Evans at *rlevans@nsf.gov* to obtain a visitor badge. All visitors to the NSF will be required to show photo ID to obtain a badge.

Type of Meeting: OPEN.

Contact Person: Brent Miller, National Science Foundation, 4201 Wilson Boulevard, Room 605, Arlington, VA 22230; Tel No: (703) 292–8400.

Purpose of Meeting: The Advisory Committee for the Directorate for Biological Sciences (BIO) provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Agenda items will include Directorate updates, AC ''Leading Edge'' portfolio analysis, a Division of Biological Infrastructure program assessment update, the preliminary proposal review update, presentations and discussions on partnerships, and other matters relevant to the Directorate for Biological Sciences.

Dated: March 20, 2017.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2017–05798 Filed 3–22–17; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–027 and 52–028; NRC–2008–0441]

South Carolina Electric & Gas Company, Virgil C. Summer Nuclear Station, Units 2 and 3; Qualified Data Processing System and Safety Display

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 60 to Combined Licenses (COL), NPF–93 and NPF–94. The COLs were issued to South Carolina Electric & Gas Company on behalf of itself and the South Carolina Public Service Authority (both hereafter called the licensee); for construction and operation of the Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3, located in Fairfield County, South Carolina.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on February 9, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0441 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated October 24, 2016 (ADAMS Accession No. ML16298A385).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Paul Kallan, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2809; email: *Paul.Kallan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment No. 60 to COLs, NPF–93 and NPF–94, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes that would revise the Updated Final Safety Analysis report in the form of departures from the incorporated plant-specific DCD Tier 2 information. The proposed amendment also involves related changes to plant-specific Tier 1 information, with corresponding changes to the associated COL Appendix C information.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license

amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML17027A292.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VCSNS Units 2 and 3 (COLs NPF–93 and NPF–94). The exemption documents for VCSNS Units 2 and 3 can be found in ADAMS under Accession Nos. ML17027A255 and ML17027A266, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–93 and NPF–94 are available in ADAMS under Accession Nos. ML17027A245 and ML17027A252, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VCSNS Units 2 and Unit 3. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated October 24, 2016, the licensee requested from the Commission an exemption from the provisions of 10 CFR part 52, appendix D, Section III.B, as part of license amendment request 16–17, ''Qualified Data Processing System and Safety Display Description (LAR 16–17).''

For the reasons set forth in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML17027A292, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined Licenses as described in the licensee's request dated October 24, 2016. This exemption is related to, and necessary for, the granting of License Amendment No. 60, which is being issued concurrently with this exemption.

3. As explained in Section 5.0, ''Environmental Consideration,'' of the NRC staff's Safety Evaluation (ADAMS Accession No. ML17027A292), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated October 24, 2016, the licensee requested that the NRC amend the COLs for VCSNS, Units 2 and 3, COLs NPF–93 and NPF–94. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on November 22, 2016 (81 FR 83871). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on October 24, 2016. The exemption and amendment were issued on February 9, 2017, as part of a combined package to the licensee (ADAMS Accession No. ML17027A223).

Dated at Rockville, Maryland, this 13th day of March 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–05779 Filed 3–22–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4 Containment Hydrogen Igniter Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 61 to Combined Licenses (COLs), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on December 22, 2016.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol

Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated February 6, 2015 (ADAMS Accession No. ML15037A715), as supplemented by letter dated September 15, 2015 (ADAMS Accession No. ML15258A555).

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment No. 61 to COLs, NPF–91 and NPF–92, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes to the VEGP Units 3 and 4 Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific DCD Tier 2 information. The proposed amendment also involves related changes to plant-specific Tier 1 information, with corresponding changes to the associated COL Appendix C information.

The amendment authorizes changes to the VEGP Units 3 and 4 UFSAR: (1) To add two additional hydrogen igniters to the in-containment refueling water storage tank roof vents; (2) to remove control of the hydrogen igniters from the protection and safety monitoring system; (3) to clarify the controls available for the hydrogen igniters at the remote shutdown workstation; and (4) to make changes to the design aspects of the hydrogen igniters to maintain consistency within various licensing documents. Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML16096A449.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML16096A431 and ML16096A433, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML16096A424 and ML16096A427, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated February 6, 2015, and supplemented by letter dated September 15, 2015, the licensee requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, as part of license amendment request 15–003, ''Containment Hydrogen Igniter Changes.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML16096A449, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information related to hydrogen igniter, as described in the licensee's request dated February 6, 2015, and supplemented by letter dated September 15, 2015. This exemption is related to, and necessary for the granting of License Amendment No. 61, which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML16096A449), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated February 6, 2015 (ADAMS Accession No. ML15037A715), as supplemented by letter dated September 15, 2015 (ADAMS Accession No. ML15258A555), the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this document.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on March 2, 2016 (81 FR 10920). Comments were received during the 30-day comment period.

IV. Public Comments

A request for a hearing was filed on May 2, 2016, by the Blue Ridge Environmental Defense League (''BREDL'') and its chapter, Concerned Citizens of Shell Bluff (ADAMS Accession No. ML16124B062). The Atomic Safety and Licensing Board (ASLB) denied BREDL's request for hearing in an order dated September 16, 2016 (ADAMS Accession No. ML16259A157). Subsequently, on October 11, 2016, BREDL appealed the ASLB decision (ADAMS Accession No. ML16285A548). On February 16, 2017, the Commission affirmed the ASLB's decision (ADAMS Accession No. ML17047A149).

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has made a final determination that no significant hazards consideration is involved.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

V. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on February 6, 2015, and supplemented by letter dated September 15, 2015. The exemption and amendment were issued on December 22, 2016, as part of a combined package to the licensee (ADAMS Accession No. ML16096A345).

Dated at Rockville, Maryland, this 13th day of March 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–05786 Filed 3–22–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0183]

Information Collection: NRC Form 749, ''Manual License Verification Report''

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 749, ''Manual License Verification Report.''

DATES: Submit comments by May 22, 2017. 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0183. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–5 F53, 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: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0183 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0183. A copy of the collection of Information and related instructions may be obtained without charge by accessing Docket ID NRC–2016–0183.
- *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 Supporting Statement and NRC Form 749 ''Manual License Verification Report'' are available in ADAMS under Accession Nos. ML16294A577 and ML16335A194.
- *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2016–0183 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit

comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 749, ''Manual License Verification Report.''
2. *OMB approval number:* 3150–0223.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 749.
5. *How often the collection is required or requested:* On occasion. Licensees subject to 10 CFR part 37, ''Physical Protection of Byproduct Material'' license verification requirements must verify the legitimacy of the license with the issuing agency prior to transferring radioactive materials in quantities of concern.
6. *Who will be required or asked to respond:* Licensees are required to complete a license verification under the circumstances noted in 4 above. A License Verification System (LVS) is available to provide an electronic method for fulfilling this requirement. In cases where a licensee is unable to use the LVS to perform a verification, they will provide NRC Form 749 for manual license verification.
7. *The estimated number of annual responses:* 456.
8. *The estimated number of annual respondents:* 456.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 46 hours.
10. *Abstract:* When a licensee is unable to use the License Verification System to perform their license verification prior to transferring radioactive materials in quantities of concern, a manual process is available, in which licensees submit the NRC Form 749, ''Manual License Verification Report.'' The form provides the information necessary for the license issuing agencies to perform the verification on behalf of the licensee transferring the radioactive materials.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 17th day of March 2017.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2017–05749 Filed 3–22–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4 Nuclear Instrumentation System Excore Detector Surface Material Inspection Clarification

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 66 to Combined Licenses (COLs), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on January 19, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated July 25, 2016 (ADAMS Accession No. ML16207A496), and supplemented by the letters dated September 23, 2016 (ADAMS Accession No. ML16267A429) and October 13, 2016 (ADAMS Accession No. ML16287A662).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Paragraph B of Section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to

part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment No. 66 to COLs, NPF–91 and NPF–92, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes to the VEGP Units 3 and 4 Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific DCD Tier 2 information. The proposed amendment also involves related changes to plant-specific Tier 1 information, with corresponding changes to the associated COL Appendix C information to clarify the Inspections, Tests, Analyses and Acceptance Criteria (ITAAC) related to the inspection of excore (source range, intermediate range, and power range) detectors. Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML16320A370.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML16320A277 and ML16320A282, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML16320A258 and ML16320A265, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated July 25, 2016, as supplemented by letters dated September 23, 2016, and October 13, 2016, the licensee requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, Appendix D, as part of license amendment request 16–010, ''Nuclear Instrumentation System Excore Detector Surface Material Inspection Clarification.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found at ADAMS Accession No. ML16320A370, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined Licenses as described in the licensee's request dated July 25, 2016, as supplemented by letters dated September 23, 2016, and October 13, 2016. This exemption is related to, and necessary for the granting of License Amendment No. 66, which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML16320A370), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated July 25, 2016 (ADAMS Accession No. ML16207A496), and supplemented by the letters dated September 23, 2016 (ADAMS Accession No. ML16267A429), and October 13, 2016 (ADAMS Accession No. ML16287A662), the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this document.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on September 13, 2016 (81 FR 62926). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on July 25, 2016, as supplemented by letters dated September 23, 2016, and October 13, 2016. The exemption and amendment were issued on January 19, 2017, as part of a combined package to the licensee (ADAMS Accession No. ML16320A230).

Dated at Rockville, Maryland, this 13th day of March 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–05778 Filed 3–22–17; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80266; File No. SR–PEARL–2017–12]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend MIAX PEARL Rules 517A, Aggregate Risk Manager for EEMs (''ARM–E''), and 517B, Aggregate Risk Manager for Market Makers (''ARM–M'')

March 17, 2017.

Pursuant to the provisions of 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 March 6, 2017, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to amend Exchange Rules Rule 517A, Aggregate Risk Manager for EEMs (''ARM–E''), and 517B, Aggregate Risk Manager for Market Makers (''ARM–M'').

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rules 517A, ARM–E, and 517B, ARM–M by adopting and adding proposed Interpretations and Policies .01 to Rule 517A to state that the MIAX PEARL System [3] does not include in a specific Electronic Exchange Member's (''EEM'') [4] EEM Counting Program (described below) contracts executed as a result of an immediate-or-cancel (''IOC'') order [5] submitted by such EEM, and to adopt and add Interpretations and Policies .02 to Rule 517B, stating that the System does not include in a specific Market Maker's'' [6] MM Counting Program (described below) contracts executed as a result of an immediate-or-cancel (''IOC'') order submitted by such MM.

ARM–E

ARM–E protects MIAX PEARL EEMs and assists them in managing risk by maintaining a counting program (''EEM Counting Program'') for each participating EEM who has submitted an order in an EEM Specified Option Class [7] using a specified market participant identifier (''MPID'') [8] of the EEM and delivered via the MEO Interface [9] as described herein (an ''EEM ARM Eligible Order''). The EEM Counting Program counts the number of contracts executed by an EEM from an EEM ARM Eligible Order (the ''EEM ARM Contracts'') within a specified time period that has been established by the EEM (the ''EEM Specified Time Period''). The EEM Specified Time Period cannot exceed 15 seconds.

The EEM may also establish for each EEM Specified Option Class an EEM Allowable Engagement Percentage (the ''Allowable Engagement Percentage''), which is a number of contracts, divided by the size of the orders, executed within the Specified Time Period, equal to or over which the ARM–E will be triggered. When an execution of an EEM ARM Contract from an EEM ARM Eligible Order occurs, the System will look back over the EEM Specified Time Period to determine whether the sum of contract executions from such EEM ARM Eligible Order during such EEM Specified Time Period triggers the ARM–E.

The System will engage ARM–E in a particular EEM Specified Option Class when the EEM Counting Program has determined that an EEM has executed during the EEM Specified Time Period a number of EEM ARM Contracts from an EEM ARM Eligible Order equal to or above their EEM Allowable Engagement Percentage. ARM–E will then, until the EEM sends a notification to the System of the intent to reengage and submits a new order in the EEM Specified Option Class: (i) Automatically cancel the EEM ARM Eligible Orders in all series of that particular EEM Specified Option Class and (ii) reject new orders by the EEM in all series of that particular EEM Specified Option Class submitted using the MEO Interface

ARM–M

ARM–M protects MIAX PEARL Market Makers and assists them in managing risk by maintaining a counting program (''MM Counting Program'') for each Market Maker who has submitted an order in an option class (an ''MM Option Class'') delivered via the MEO Interface (an ''MM ARM Eligible Order''). The MM Counting Program counts the number of contracts executed by a Market Maker from an MM ARM Eligible Order (the ''MM ARM Contracts'') within a specified time period that has been established by the Market Maker or as a default setting, as defined below (the ''MM Specified Time Period''). The MM Specified Time Period cannot exceed 15 seconds whether established by the Market Maker or as a default setting as described below.

The Market Maker may also establish for each MM Option Class an MM Allowable Engagement Percentage. Unlike ARM–E, under which there is no default setting, the Exchange will establish a default MM Specified Time

[3] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[4] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[5] An IOC order is an order that is to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. An IOC order is not valid during the Opening Process described in Rule 503. *See* Exchange Rule 516(e).

[6] The term ''Market Maker'' or ''MM'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of these Rules. *See* Exchange Rule 100.

[7] An ''EEM Specified Option Class'' is a class which the EEM has designated as a class to be protected via ARM–E. *See* Exchange Rule 517A(a).

[8] The term ''MPID'' means unique market participant identifier. *See* Exchange Rule 100.

[9] The term ''MEO Interface'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX PEARL System. *See* Exchange Rule 100.

Period and a default Allowable Engagement Percentage (''default settings'') on behalf of a Market Maker that has not established an MM Specified Time Period and/or an MM Allowable Engagement Percentage. The default MM Allowable Engagement Percentage shall not be less than 100%. The default settings will be determined by the Exchange on an Exchange-wide basis and announced to Members via Regulatory Circular. When an execution of an MM ARM Contract from an MM ARM Eligible Order occurs, the System will look back over the MM Specified Time Period to determine whether the sum of contract executions from such MM ARM Eligible Order during such MM Specified Time Period triggers the ARM–M.

The System will engage ARM–M in a particular MM Option Class when the MM Counting Program has determined that a Market Maker has executed during the MM Specified Time Period a number of MM ARM Contracts from an MM ARM Eligible Order equal to or above their MM Allowable Engagement Percentage. ARM–M will then, until the Market Maker sends a notification to the System of the intent to reengage and submits a new order in the MM Option Class: (i) Automatically cancel the MM ARM Eligible Orders in all series of that particular MM Option Class and (ii) reject new orders by the Market Maker in all series of that particular MM Option Class submitted using the MEO Interface.

The Proposal

The Exchange is proposing to adopt and add Interpretations and Policies .01 to Rule 517A, to state that the System will not include in a specific EEM's EEM Counting Program contracts executed as a result of an IOC order submitted by such EEM.

In a parallel proposal, the Exchange is also proposing to adopt and add Interpretations and Policies .02 to Rule 517B, to state that the System will not include in a specific Market Maker's MM Counting Program contracts executed as a result of an IOC submitted by such Market Maker.

ARM–E and ARM–M are designed to assist MIAX PEARL EEMs and Market Makers in managing their risk associated with liquidity they send to the Exchange. Thus, the EEM and MM Counting Programs will include all contracts executed from orders, other than those orders designated as IOC, whether the EEM or MM is acting as maker or taker, in the calculation of the Allowable Engagement Percentage applicable to the affected EEM Specified Option Class or Market Maker in the MM Option Class.

If, however, the same EEM or Market Maker submits an IOC order in the EEM Specified Option Class or MM Option Class that is executed against another order resting on the MIAX PEARL Book, the number of contracts executed from such IOC order would not be included in the calculation of the submitting EEM or Market Maker's Allowable Engagement Percentage in the EEM Specified Option Class or MM Option Class, as applicable. In such a situation, the affected EEM or Market Maker is not at any undue or unintended risk caused by the EEM or Market Maker's submission of the IOC order.

The number of contracts executed from an order resting on the Book, is, however, included in the calculation of the Allowable Engagement Percentage applicable to the EEM or Market Maker that submitted that order. A resting order is subject to the risk of exposure that ARM–E and ARM–M are designed to mitigate. Therefore the Exchange believes that it is reasonable to include contracts executed from a resting order, which has a longer time-in-force than an IOC order and is thus a greater risk than an IOC order submitted for execution against it. Additionally, in the case of a partial execution, the remaining contracts in a resting order are still at market risk, while remaining contracts from the partial execution of an IOC order are cancelled if not executed, thus obviating the need for ARM–E or ARM–M protection. Conversely, in the Exchange's experience, an IOC order is an order that is designed to target specific, identifiable liquidity resting on the Book that the entering Member desires to trade with (remove), and thus the Member entering the IOC order does not require the risk management protection of the ARM, as the Member entering the IOC order made an affirmative decision to attempt to executed that transaction.

The Exchange therefore believes that the inclusion of the number of contracts executed by way of an IOC order submitted by an EEM or Market Maker would unnecessarily and artificially inflate the calculation of the Allowable Engagement Percentage, and thus ARM–E or ARM–M could serve to preclude or prevent the further execution of contracts from orders resting on the MIAX PEARL Book (for which ARM–E or ARM–M has been triggered unnecessarily by an IOC order they submitted) that were submitted by the affected EEM or Market Maker and otherwise remain intended for execution.

The purpose of the proposed rule change is to enable individual EEMs and Market Makers to enhance their risk management for an individual option class or for multiple classes as market conditions warrant, based on their own risk tolerance level and order submission or quoting behavior. EEMs and Market Makers will be able to more precisely customize their risk management within the MIAX PEARL System through the use of IOC orders without triggering ARM–E or ARM–M before their actual risk tolerance levels relating to the number of contracts executed within a specified time period have been reached. The proposed rule change will provide greater ability for EEMs and Market Makers to adapt more exact and precise risk controls based on the EEM or Market Maker's risk tolerance levels.

The Exchange notes that the proposed rule is similar to a rule that is currently operative on MIAX Options (''MIAX Options''). Specifically, Interpretations and Policies .01 to MIAX Options Rule 612, Aggregate Risk Manager, states that the System does not include contracts traded through the use of an eQuote [10] that is not a Day eQuote [11] in the counting program for purposes of this Rule. eQuotes will remain in the System available for trading when the Aggregate Risk Manager is engaged.

The inclusion of the number of contracts executed by way of an IOC order, which is substantially similar to an IOC eQuote with respect to its time-in-force, would unnecessarily and artificially inflate the calculation of the Allowable Engagement Percentage in ARM–E and ARM–M in the same manner in which an IOC eQuote affects the ARM calculation on MIAX Options. This is a similar rationale for the instant proposal to exclude IOC orders on MIAX PEARL from the calculation of the Allowable Engagement Percentage in ARM–E and ARM–M.

[10] An eQuote is a quote with a specific time in force that does not automatically cancel and replace a previous Standard quote or eQuote. An eQuote can be cancelled by the Market Maker at any time, or can be replaced by another eQuote that contains specific instructions to cancel an existing eQuote. *See* MIAX Options Rule 517(a)(2).

[11] A Day eQuote is a quote submitted by a Market Maker that does not automatically cancel or replace the Market Maker's previous Standard quote or eQuote. Day eQuotes will expire at the close of trading each trading day. The Exchange reserves the right to limit the number of Day eQuotes that a single Market Maker may place on the same side of an individual option. The same limit will apply to all types of Market Makers. If the Exchange determines to establish a limit, it will be no more ten Day eQuotes on the same side of an individual option. The Exchange will publish the limit through the issuance of a Regulatory Circular. *See* MIAX Options Rule 517(a)(2)(i).

The Exchange will announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 60 days following the operative date of the proposed rule. The implementation date will be no later than 60 days following the issuance of the Regulatory Circular.

2. Statutory Basis

MIAX PEARL believes that its proposed rule change is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(5) of the Act [13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

Significantly, the proposed rule change removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest because it enhances a risk management tool that is currently available to MIAX PEARL EEMs and Market Makers. The exclusion of contracts executed from IOC orders submitted by an EEM or Market Maker from the calculation of their Allowable Engagement Percentage will enable MIAX PEARL EEMs and Market Makers to more efficiently tailor the risk management tools provided by the Exchange by ensuring them that contracts executed from orders that are not part of their risk management strategy will not artificially inflate their Allowable Engagement Percentage. This tailored approach further protects investors and the public interest by enabling the maximum number of contracts in an EEM Specified Option Class or an MM Option Class to be executed without unnecessary interruption, all within the EEM or Market Maker's risk tolerance level based upon the actual Allowable Engagement Percentage.

As stated above, the proposed exclusion of IOC orders from the calculation of the Allowable Engagement Percentage is substantially similar to the exclusion of IOC eQuotes from that calculation in the MIAX Options ARM protection feature.[14]

The exclusion of the number of contracts executed by way of IOC orders from the calculation of the Allowable Engagement Percentage also serves to remove impediments to and perfect the mechanisms of a free and open market and a national market system by enhancing EEMs' and Market Makers' confidence in the Exchange's ability to assist them in the accurate measuring of their management of risk, which may result in deeper liquidity on the Exchange's Book, serving to benefit and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

On the contrary, the Exchange believes that the proposed rule change will foster competition by providing Exchange EEMs and Market Makers with the ability to enhance and specifically customize their use of the Exchange's risk management tools in order to compete for executions and order flow.

As to inter-market competition, the Exchange believes that the proposed rule change should promote competition because it is designed to provide Exchange EEMs and Market Makers with accuracy and flexibility to modify their risk exposure in order to protect them from unusual market conditions or events that may increase their exposure in the market.

For all the reasons stated, 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, and believes the proposed change will in fact enhance competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) [16] thereunder.

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–PEARL–2017–12 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–PEARL–2017–12. 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 Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* MIAX Options Rule 612.01.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 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.

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2017–12 and should be submitted on or before April 13, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–05737 Filed 3–22–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80269; File No. SR–ICEEU–2017–003]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of a Proposed Rule Change, Security-Based Swap Submission or Advance Notice Relating to the CDS End-of-Day Price Discovery Policy

March 17, 2017.

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 March 10, 2017, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the changes is to modify certain aspects of ICE Clear Europe's CDS End-of-Day Price Discovery Policy (the ''EOD Price Discovery Policy'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

1. Purpose

The purpose of the rule change is to incorporate certain enhancements to the EOD Price Discovery Policy. These revisions do not require any changes to the ICE Clear Europe Clearing Rules.

ICE Clear Europe proposes revising its EOD Price Discovery Policy to implement a new direct price submission process for Clearing Members. Currently, ICE Clear Europe uses an intermediary agent to implement functions of its price discovery process. Under the current process, Clearing Members make required price submissions to the intermediary agent. These prices are then input into ICE Clear Europe's price settlement methodology to determine settlement prices. ICE Clear Europe is proposing to remove the intermediary agent from the price settlement process. In doing so, ICE Clear Europe will require Clearing Members to submit prices directly to the clearing house. The prices will continue to be input into ICE Clear Europe's price settlement methodology to determine settlement prices. ICE Clear Europe is not otherwise changing the price settlement methodology itself.

The proposed revisions to the EOD Price Discovery Policy are described in detail as follows: Under the revised policy, ICE Clear Europe requires Clearing Members to establish direct connectivity with the clearing house and use a FIX API to submit required prices. ICE Clear Europe is revising the EOD Price Discovery Policy to remove references to the intermediary agent and the Valuation Service API (and related message terminology), which will be decommissioned with the launch of the new Clearing Member direct price submission process. The revisions also add references to the new FIX API message terminology which will be utilized under the new Clearing Member direct price submission process. Such changes are reflected throughout the EOD Price Discovery Policy. ICE Clear Europe has also updated the EOD Price Discovery Policy to specify that ICE Clear Europe will send the unsolicited FIX API messages directly to each Clearing Member.

Under the new Clearing Member direct price submission process, ICE Clear Europe will consolidate the price discovery process across index and single-name CDS. As such, new FIX API messages will include information for both index and single-name CDS. Previously, the price discovery process provided files separately for each product type. ICE Clear Europe has also updated the submission requirements for the CDX.NA.HY index to note that prices may be submitted in either price or upfront format; previously, only price format was accepted.

ICE Clear Europe has updated the EOD Price Discovery Policy to reflect the replacement of existing firm trade data files with new FIX API firm trade messages. ICE Clear Europe also made minor changes to the timings of certain steps in the price settlement process; no changes were made to the actual settlement submission windows.

ICE Clear Europe has also updated the process for distribution of end-of-day prices set forth in the EOD Price Discovery Policy. Under the new process, ICE Clear Europe will publish separate messages for Clearing Members, listing end-of-day prices for single-name and index CDS. The end-of-day prices provided will not change and will continue to be based on a Clearing Members' cleared positions. ICE Clear Europe will continue to publish end-of-day prices for every listed risk sub-factor's most actively traded instrument, and to distribute daily end-of-day prices for all cleared instruments through Markit.

2. Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of Section 17A of the Act[3] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22,[4] and are consistent with the prompt and accurate clearance of and settlement of securities transactions and, to the extent applicable, derivative agreements,

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78q–1.

[4] 17 CFR 240.17Ad–22.

contracts and transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[5] The amendments are intended to simplify and increase the efficiency of ICE Clear Europe's price discovery process. In particular, the changes will decrease external operational risk, as ICE Clear Europe will no longer rely on the services of an intermediary agent to perform key aspects of its price discovery process. In ICE Clear Europe's view, the amendments will generally enhance the end-of-day settlement process, and thus promote the prompt and accurate clearance and settlement of cleared contracts, within the meaning of Section 17A(b)(3)(F) of the Act.[6] The amendments are also consistent with the requirements regarding the management of operational risk in Rule 17Ad–22(d)(4) [7] and (as and when compliance therewith is required) Rule 17Ad–22(e)(17).[8]

B. Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed changes to the rules would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. ICE Clear Europe is adopting the amendments to the EOD Price Discovery Policy in order to enhance certain aspects of the price discovery process. The amendments will apply uniformly across all Clearing Members, and will not change the nature of information to be submitted by Clearing Members. ICE Clear Europe does not believe the amendments would materially affect the cost of clearing, adversely affect access to clearing in CDS Contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. As a result, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed changes to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission and Advance Notice and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice 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–ICEEU–2017–003 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–ICEEU–2017–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/clear-europe/regulation#rule-filings.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2017–003 and should be submitted on or before April 13, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–05740 Filed 3–22–17; 8:45 am]

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[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17Ad–22(d)(4).

[8] 17 CFR 240.17Ad–22(e)(17).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80270; File No. SR–CBOE–2016–082]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Related to Rules Regarding the Responsibility for Ensuring Compliance With Priority and Allocation Requirements and Trade-Through Prohibitions in Open Outcry Trading

March 17, 2017.

I. Introduction

On December 1, 2016, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange rules regarding responsibility

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

for ensuring compliance with open outcry priority and allocation requirements and trade-through prohibitions. The proposed rule change was published for comment in the **Federal Register** on December 19, 2016.[3] The Commission received two comments on the proposed rule change, plus a response letter from CBOE.[4] On January 31, 2017, pursuant to Section 19(b)(2) of the Exchange Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6]

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to institute proceedings under Section 19(b)(2)(B) of the Exchange Act[7] to determine whether to approve or disapprove the proposed rule change, as discussed in Section III below. The institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as described in Section III below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change in order to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

II. Summary of Proposal

A. Description of Proposal

According to the Exchange, currently, if a transaction executed on the trading floor is executed at a price that violates the priority and allocation provisions of 6.45A(b) and 6.45B(b) (''Book Priority'') or the trade-through prohibitions set forth in CBOE Rule 6.81 (''Trade-Through''), the Exchange enforces the violations against both parties to the transaction.[8] Under the proposed rule change, with respect to an open outcry transaction between a Floor Broker and a Market-Maker, only the party that initiated the transaction on the trading floor would be held responsible for Book Priority and Trade-Through violations.[9] With respect to an open outcry transaction between a Floor Broker and another Floor Broker, or a Market-Maker and another Market-Maker, the Exchange would hold both parties responsible for Book Priority and Trade-Through violations, consistent with the Exchange's current practice.[10]

The Exchange observes that generally, Floor Brokers initiate transactions on the Exchange's trading floor by representing orders and executing the orders against bids and offers of other in-crowd market participants, including Market-Makers.[11] The Exchange asserts that when Floor Brokers trade with Market-Makers, the Floor Brokers are in a better position to prevent Trade-Through and Book Priority violations because, unlike Market-Makers, Floor Brokers have access to the Public Automatic Routing System (''PAR'') offered by CBOE that provides Floor Brokers with the necessary market data to avoid Trade-Through and Book Priority violations, as well as provides alerts that warn Floor Brokers in advance that a proposed execution price for a given order may violate Book Priority rules or result in a potential Trade-Through.[12] The Exchange states that generally, a Floor Broker will verbally communicate a request for quote for a given order to the trading crowd, and the Market-Makers will then provide a responsive quote without the aid of PAR.[13] The Exchange states that Market-Makers evaluate a Floor Broker's request for a quote against the Market-Maker's theoretical values for the given options series, a process which the Exchange observes becomes increasingly complicated when there are multiple options series that must be evaluated for a complex order.[14] The Exchange asserts that it is therefore reasonable for a Market-Maker to rely on the Floor Broker initiating a trade to ensure that an open outcry transaction is executed in accordance with the Book Priority and Trade-Through provisions.[15]

The Exchange represents that this rule change, consistent with the Options Intermarket Linkage Plan,[16] is reasonably designed to prevent Trade-Throughs, as well as Book Priority violations, because it would place the responsibility for ensuring transactions are executed in accordance with the Exchange's rules on the ''specific party or parties in a good position to ensure compliance.'' [17] The Exchange also believes that the proposed rule change ''may help limit the number of [Book Priority] and Trade-Through violations because the proposal identifies a particular party or parties to each transaction (as opposed to all parties) as responsible for ensuring compliance with the rules.'' [18]

B. Summary of Comments

As previously noted, the Commission received two comment letters on the proposed rule change, and a response from CBOE.[19] One commenter states that it neither supports nor opposes the Exchange's proposal,[20] and the other commenter expresses support for the proposed rule change.[21]

One commenter suggests that the Exchange explain how PAR operates, and how the Exchange validates trades and conducts surveillances for purposes of regulating Book Priority and Trade-Through violations.[22] In addition, the commenter suggests that the Commission articulate a principle of governing enforcement of book priority and trade-through requirements to floor trading in standardized options.[23] Though beyond the scope of CBOE's

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[3] *See* Securities Exchange Act Release No. 79540 (December 13, 2016), 81 FR 91967 (''Notice'').

[4] *See* Letter to Brent J. Fields, Secretary, Commission, from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, dated December 22, 2016 (''Nasdaq Letter'') and Letter to Brent J. Fields, Secretary, Commission from Steve Crutchfield, Head of Market Structure, CTC Trading Group, LLC; Kevin Coleman, Chief Compliance Officer, Belvedere Trading LLC; Scott Kloin, Chief Compliance Officer, Citadel Securities LLC; Steven Gaston, Chief Compliance Officer, Consolidated Trading LLC; Rob Armour, Chief Compliance Officer, DRW Securities, LLC; John Kinahan, Chief Executive Officer, Group One Trading L.P.; Daniel Overmyer, Chief Compliance Officer, IMC Financial Markets; Steven Gaston, Chief Compliance Officer, Lamberson Capital LLC; and Patrick Hickey, Head of Market Structure, Optiver US LLC, dated February 16, 2017 (''Market Makers Letter''). *See also* Letter to Brent J. Fields, Secretary, Commission, from Kyle Edwards, Counsel, CBOE, dated March 14, 2017 (''CBOE Response Letter''). The comment letters and CBOE's response are available at *https://www.sec.gov/comments/sr-cboe-2016-082/cboe2016082.shtml.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 79910, 82 FR 9464 (February 6, 2017). The Commission designated March 19, 2017, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Notice, *supra* note 3, at 91968.

[9] *See* proposed Interpretation and Policy .05 to Rule 6.45A, Interpretation and Policy .06 to Rule 6.45B, and Interpretation and Policy .07 to Rule 6.73.

[10] *See id. See also* Notice, *supra* note 3, at 91969.

[11] *See* Notice, *supra* note 3, at 91968.

[12] *See id.* at 91969.

[13] *See id.*

[14] *See id.*

[15] *See id.* In the event a Market-Maker initiates a transaction with a Floor Broker, the Market-Maker would be responsible for ensuring that the transaction is executed in accordance with the Book Priority and Trade-Through provisions. *See id.*

[16] *See generally* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Order approving Options Intermarket Linkage Plan).

[17] *See* Notice, *supra* note 3, at 91969.

[18] *See id.*

[19] *See supra* note 4.

[20] *See* Nasdaq Letter, *supra* note 4.

[21] *See* Nasdaq Letter, *supra* note 4. *See* Market Makers Letter, *supra* note 4.

[22] *See* Nasdaq Letter, *supra* note 4, at 3.

[23] *See id.* at 4.

proposal, the commenter believes that disparities between how markets enforce these requirements could impact intramarket and intermarket competition.[24]

Other commenters (in a joint letter submitted by nine CBOE market participants) support the proposal and assert that the proposed rule change seeks to assign responsibility for ensuring compliance with open outcry priority and allocation requirements and trade-through prohibitions in a ''fair, reasonable, and logical manner,'' particularly in the case of an open-outcry trade initiated by a Floor Broker and responded to by a Market-Maker, because Market-Makers ''generally lack access to'' the tools and alerts CBOE offers to Floor Brokers that help assure compliance with those rules.[25] The commenters observe that pursuant to the Exchange's rules, it is a Floor Broker's responsibility to use due diligence to execute an order at the best price available, and to ascertain whether a better price than the one displayed is being quoted by another party, and that therefore, a Market-Maker should be able to assume that the Floor Broker has cleared the customer limit order book of any order at a better price in accordance with applicable rules.[26] The commenters assert that ''the Floor Broker—as the party controlling the precise timing of any execution he or she initiates—is definitively in the best position to ascertain whether a Trade-Through or other rule violation would occur up to the instant of trade consummation, and should therefore appropriately hold sole responsibility for compliance with the applicable rules.'' [27] The commenters believe that by clearly allocating this responsibility, the proposal would remove impediments to and better align with the mechanism of a free and open market.[28]

In its response letter, the Exchange asserts that the Nasdaq Letter does not address the substance of the proposal but rather offers general comment regarding open outcry trading.[29] In addition, in response to the Nasdaq Letter, the Exchange notes that its proposal does not describe how PAR operates or its surveillance parameters because this information is described in its rules.[30]

III. Proceedings To Determine Whether To Approve or Disapprove SR–CBOE–2016–082 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [31] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[32] the Commission is providing notice of the grounds for disapproval under consideration, as discussed below. The Commission believes that instituting proceedings will allow for additional analysis of, and input from commenters with respect to, the proposed rule change's consistency with Section 6(b)(1) of the Exchange Act, which requires that a national securities exchange is so organized and has the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the exchange.[33]

The Commission also is instituting proceedings to allow for additional analysis and input concerning the proposed rule change's consistency with Section 6(b)(5) of the Exchange Act,[34] which requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade and, in general, to protect investors and the public interest and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Commission is concerned whether the proposed rule change could adversely impact the ability of the Exchange, consistent with Section 6(b)(1) of the Exchange Act, to comply, and to enforce compliance by its members on the CBOE trading floor, with applicable rules and regulations, including the Book Priority and Trade-Through provisions. In particular, the Commission wishes to consider further whether CBOE has sufficiently demonstrated how absolving from liability for Book Priority and Trade-Through rule violations one party to a trade (*i.e.,* the responder, for trades involving a Floor Broker on one side and a Market Maker on the other) while placing sole liability on the other party (*i.e.,* the initiator, for trades involving a Floor Broker on one side and a Market Maker on the other) will foster compliance with those rules by its members and not diminish the Exchange's ability to ensure compliance with these critically important rules.

Further, the Exchange's stated justification for its proposal, which relies on the control an initiator has over the execution and price of the order as well as the fact that CBOE supplies its Floor Brokers with a system (PAR) that helps automate the necessary pre-trade checks, appears inconsistent with continuing to hold *both* parties to a trade liable when the trade is between two Market Makers or two Floor Brokers. Similarly, the proposal raises questions under Section 6(b)(5) of the Exchange Act, in that not enforcing Trade-Through and Book Priority violations against a party based on the identity of its counter-party (*i.e.,* not enforcing against the responder when a Market-Maker trades with a Floor Broker, but enforcing against both parties when a Market-Maker trades with a Market-Maker or a Floor Broker trades with a Floor Broker) may be unfairly discriminatory.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(1), 6(b)(5), or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an

[24] *See id.* at 3.

[25] *See* Market Makers Letter, *supra* note 4, at 1–2. In addition, the commenter asserted that the issues raised by the Nasdaq letter ''have no bearing on'' the Exchange's proposal. *See id.*

[26] *See id.* at 2.

[27] *See id.*

[28] *See id.*

[29] *See* CBOE Response Letter, *supra* note 4, at 1.

[30] *See id.* at 3.

[31] 15 U.S.C. 78s(b)(2)(B).

[32] *Id.*

[33] 15 U.S.C. 78f(b)(1).

[34] 15 U.S.C. 78f(b)(5).

opportunity to make an oral presentation.[35]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by April 13, 2017. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 27, 2017. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2016–082 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 Numbers SR–CBOE–2016–082. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–082 and should be submitted on or before April 13, 2017. Rebuttal comments should be submitted by April 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–05741 Filed 3–22–17; 8:45 am]

BILLING CODE 8011–01–P

[35] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[36] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80267; File No. SR–ISE–2017–24]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees To Modify the Member Order Routing Program

March 17, 2017.

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 March 10, 2017, the International Securities Exchange, 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 amend its Schedule of Fees to allow members to opt in to MORP for specific sessions rather than on a member-wide basis, and to increase MORP rebates for members that participate in the program.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.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

On April 1, 2015, the Exchange launched the Member Order Routing Program (''MORP''),[3] which is a program that provides enhanced rebates to order routing firms that select the Exchange as the default routing destination for unsolicited Crossing Orders.[4] The purpose of the proposed rule change is to amend the Schedule of Fees to allow members to opt in to MORP for specific sessions rather than on a member-wide basis, and to increase MORP rebates for members that participate in the program. The Exchange believes that these changes will encourage members to participate in MORP.

MORP Qualifications

Currently, to be eligible to participate in MORP, an Electronic Access Member (''EAM'') must: (1) Provide to its clients, systems that enable the electronic routing of option orders to all of the U.S. options exchanges, including ISE; (2) interface with ISE to access the Exchange's electronic options trading platform; (3) offer to its clients a customized interface and routing functionality such that ISE will be the default destination for all unsolicited

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74706 (April 10, 2016), 80 FR 20522 (April 16, 2016) (SR–ISE–2015–11).

[4] A ''Crossing Order'' is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (''PIM'') or submitted as a Qualified Contingent Cross (''QCC'') order. For purposes of the fee schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

Crossing Orders entered by the EAM,[5] provided that market conditions allow the Crossing Order to be executed on ISE; (4) configure its own option order routing functionality such that ISE will be the default destination for all unsolicited Crossing Orders, provided that market conditions allow the Crossing Order to be executed on ISE, with respect to all option orders as to which the EAM has routing discretion; and (5) ensure that the default routing functionality permits users submitting option orders through such system to manually override the ISE as the default destination on an order-by-order basis.[6]

Importantly, today an EAM must opt in to MORP for all of its business, and cannot segment its business to be eligible for MORP for only specific portion of its order flow. This means that EAMs that would otherwise have a MORP qualifying business would be prohibited from participating in the program if certain segments of its business are not eligible for the program. The Exchange therefore proposes to increase the scope of MORP. In particular, the Exchange proposes to allow EAMs to opt in to MORP for specific sessions so that firms can appropriately segment their order flow such that sessions designated as MORP eligible can benefit from the program even though the firm may not qualify on a member-wide basis.[7] As proposed, a member may designate one or more sessions to be eligible for MORP. If a session is designated as eligible for MORP all requirements for the program must be met for that session. In addition, to be eligible to participate in MORP an EAM must designate, in writing, to the Exchange which sessions are MORP eligible according to the criteria discussed above. Only designated sessions that are opted in to MORP will receive the benefits provided under the program. The Exchange believes that this change will make it easier for firms to participate in the program, thereby increasing volume executed in the Exchange's crossing mechanisms.

[5] An unsolicited Crossing Order is a Crossing Order entered by a member that has not solicited the contra side of the trade.

[6] EAMs that wish to participate in the program must certify that they meet the above MORP requirements, in writing, on a monthly basis and in a form to be determined by the Exchange. The relevant notice must be provided by the last business day of the month for members to be eligible to participate in the MORP effective the first business day of the following month.

[7] A session is connection to the exchange over which a member submits orders. *See* Section V.C. of the Schedule of Fees.

Rebate for Unsolicited Crossing Orders

Currently, an EAM that is MORP eligible receives a rebate for all unsolicited Crossing Orders of $0.05 per originating contract side, provided that the member executes a minimum average daily volume (''ADV'') in unsolicited Crossing Orders of at least 30,000 originating contract sides. This rebate is increased to $0.07 per originating contract side, provided that the member executes a higher ADV in unsolicited Crossing Orders of 100,000 originating contract sides.[8] The Exchange proposes to increase the MORP rebate for eligible members that execute from 30,000 to 99,999 originating contract sides to $0.065 per originating contract side. The MORP rebate for eligible members that execute 100,000 or more originating contract sides will remain $0.07 per originating contract side.

Facilitation and Solicitation Break-Up Rebate

In addition, any EAM that qualifies for the MORP rebate by executing an ADV of 30,000 originating contract sides or more is also eligible for increased Facilitation and Solicitation break-up rebates [9] for their Non-ISE Market Maker,[10] Firm Proprietary,[11] Broker-Dealer,[12] Professional Customer,[13] and Priority Customer orders.[14] Currently, MORP eligible members that execute a qualifying ADV in unsolicited Crossing Orders of at least 30,000 originating contract sides, receive a Facilitation and Solicitation break-up rebate that is $0.35 per contract for regular and complex orders in Select Symbols,[15] $0.15 per contract for regular orders in Non-Select Symbols,[16] $0.80 per contract for complex orders in Non-Select Symbols, and $0.15 per contract for regular and complex orders in foreign exchange option classes (''FX Options''). The Exchange proposes to increase these Facilitation and Solicitation break-up rebates for MORP-eligible members to $0.42 per contract for regular and complex orders in Select Symbols, $0.20 per contract for regular orders in Non-Select Symbols, $1.08 per contract for complex orders in Non-Select Symbols. Regular and complex orders in FX Options will continue to receive a Facilitation and Solicitation break-up rebate of $0.15 per contract.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[17] in general, and Section 6(b)(4) of the Act,[18] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes the proposed change to the MORP qualifications is reasonable and equitable because it is designed to make it easier for EAMs to participate in the program. Currently, an EAM that wishes to participate in MORP must be eligible to participate across the entire firm. Thus, firms that have business segments that are not MORP-eligible cannot participate with respect to those business segments that are. The Exchange believes that the proposed rule change will allow firms to participate in the program if they meet the requirements with respect to any segment of their order flow. This will encourage order routing firms to execute additional unsolicited Crossing Order volume on the Exchange, and will benefit all market participants on ISE by creating additional liquidity and increased opportunity to trade. In addition, the Exchange believes that the proposed change is not unfairly discriminatory as it would make it easier for firms to participate in the program, thus potentially sharing the

[8] The rebate for the highest tier achieved is applied retroactively to all eligible contracts traded in a given month. For purposes of determining whether the member meets the above ADV thresholds, any day that the Exchange is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

[9] Break-up rebates are provided for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbooks. The applicable fee for Crossing Orders is applied to any contracts for which a rebate is provided.

[10] A ''Non-ISE Market Maker'' is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

[11] A ''Firm Proprietary'' order is an order submitted by a member for its own proprietary account.

[12] A ''Broker-Dealer'' order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

[13] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer.

[14] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in ISE Rule 100(a)(37A).

[15] ''Select Symbols'' are options overlying all symbols listed on the ISE that are in the Penny Pilot Program.

[16] ''Non-Select Symbols'' are options overlying all symbols excluding Select Symbols.

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(4).

rewards of the program with additional EAMs that may not otherwise qualify. With the proposed changes, any qualifying EAM with designated sessions that meet the requirements of the program by offering appropriate market access and connectivity to the Exchange will be able to participate in MORP on an equal and non-discriminatory basis.

The Exchange believes the proposed increases to MORP rebates, including the rebate for unsolicited Crossing Orders, and the Facilitation and Solicitation break-up rebate, are reasonable and equitable because these changes are designed to incentivize additional participation in the program. Under MORP the Exchange currently provides enhanced rebates to EAMs that connect directly to the Exchange and provide their clients with order routing functionality that includes all U.S. options exchanges, including ISE. The Exchange proposes to increase the rebates to incentivize additional firms to participate in the program, and to encourage firms to send additional order flow to the Exchange in order to benefit from the increased rebates. The Exchange believes that the proposed rebates will be attractive to members to opt in to MORP, and are competitive with rebates provided on other options exchanges. In addition, the Exchange believes that the proposed rebates are not unfairly discriminatory as they apply to all EAMs that meet the program requirements and opt in to the program. Any EAM that participates in the program will be provided the increased rebates on an equal and non-discriminatory basis based on the order flow executed on the Exchange. While MORP is targeted towards unsolicited Crossing Order flow, the Exchange offers other incentive programs to promote and encourage growth in other business areas. For example, solicited Crossing Orders benefit from the QCC and Solicitation Rebate, which applies to all QCC and/or other solicited Crossing Orders, including solicited orders executed in the Solicitation, Facilitation or Price Improvement Mechanisms. The Exchange believes that MORP is appropriately tailored to the order flow that the Exchange is seeking to attract, and will benefit all market participants that trade on ISE by encouraging additional liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[19] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to make it easier for firms to participate in MORP and increases incentives for doing so, in order to remain competitive with other options exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (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–2017–24 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–2017–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2017–24 and should be submitted on or before April 13, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–05738 Filed 3–22–17; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78f(b)(8).

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80268; File No. SR–NYSEMKT–2017–05]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Amending Rules 7.29E and 1.1E To Provide for a Delay Mechanism

March 17, 2017.

On January 27, 2017, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 7.29E and 1.1E to provide for an intentional delay to specified order processing. The proposed rule change was published for comment in the **Federal Register** on February 15, 2017.[3] The Commission has received two comment letters on the proposal.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 1, 2017.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act [6] and for the reasons stated above, the Commission designates May 16, 2017, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEMKT–2017–05).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–05739 Filed 3–22–17; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79998 (February 9, 2017), 82 FR 10828.

[4] *See* Letters to Brent J. Fields, Secretary, Commission, from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, dated March 10, 2017; and Tyler Gellasch, Executive Director, Healthy Markets Association, dated March 10, 2017.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80274; File No. SR–ISE–2017–27]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to ''Tick-Worse'' Functionality

March 17, 2017.

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 March 15, 2017, the International Securities Exchange, 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 (i) request the decommission of ''Tick-Worse'' functionality and (ii) amend Rule 713 (Priority of Quotes and Orders) relating to the priority of split price transactions.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.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 purpose of the proposed rule change is to (i) decommission the ''Tick-Worse'' functionality and (ii) amend Rule 713 (Priority of Quotes and Orders) as it relates to the priority of split price transactions. The proposed changes are discussed below.

''Tick-Worse'' Functionality

The Exchange currently provides market makers [3] with Tick-Worse functionality, which allows market makers to pre-define the prices and sizes at which the system will automatically move their quotation following an execution that exhausts the size of their existing quotation.[4] As such, when a market maker's quote is traded out, it can be automatically reinstated into the Exchange's order book at the next best price.[5] This optional feature is intended to help market makers meet their continuous quoting obligations under the Exchange's rules [6] when their displayed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''market makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Rule 100(a)(25).

[4] Tick-Worse functionality is not currently memorialized in the Exchange's rulebook. In addition, the Exchange will not offer Tick-Worse on the new Nasdaq INET system going forward. On September 30, 2004, International Securities Exchange, LLC (''ISE'') filed with the Commission a proposal to codify this functionality in its rulebook, but inadvertently deleted the rule as obsolete rule text in a subsequent proposal filed on December 21, 2012. *See* Securities Exchange Act Release No. 51050 (January 18, 2005), 70 FR 3758 (January 26, 2005) (SR–ISE–2004–31); Securities Exchange Act Release No. 68570 (January 3, 2013), 78 FR 1901 (January 9, 2013) (SR–ISE–2012–82).

[5] Market makers may choose to set Tick-Worse parameters by specifying how many price ticks back, and for what size, the quote is to be reinstated.

[6] Specifically, Primary Market Makers (''PMMs'') are required under Rule 804(e)(1) to enter quotations in all of the series listed on the Exchange of the options classes to which they are appointed on a daily basis. Supplementary Material .01 to Rule 804 further requires PMMs to quote 90% of the time their assigned options class is open for trading on the Exchange. As provided in Rule 804(e)(2), Competitive Market Makers (''CMMs'') are not required to enter quotations in the options class to which they are appointed, but in the event a CMM does initiate quoting, such CMM is generally required to quote 60% of the time its

quotations are exhausted. When a market maker's quote is traded out and automatically reinstated into the Exchange's order book using the Tick-Worse functionality, the reinstated quote will be given priority pursuant to the Exchange's split price priority rule as discussed below.

Due to the lack of demand for the Tick-Worse feature, the Exchange proposes to decommission the use of this functionality as it migrates symbols to INET no later than in July 31, 2017.[7] As discussed above, the Exchange offers the Tick-Worse feature as a voluntary tool for market makers to assist them in meeting their continuous quoting obligations under the Exchange's rules. As such, market makers are not required to use the Exchange-provided functionality and can program their own systems to perform the same functions if they prefer. The Exchange has found that almost all market makers use their own systems rather than the Exchange's Tick-Worse feature to send refreshed quotations when their displayed quotations are exhausted, and therefore members have discontinued use of this functionality. Because the Tick-Worse functionality is currently not memorialized in the Exchange's rules as noted above, there is no text of the proposed rule change. The Exchange will provide advance notice to its Members through an Options Trader Alert of the intent to decommission the Tick-Worse functionality.[8]

Split Price Priority

The Exchange is proposing to delete ISE Rule 713(f), which relates to the priority of split price transactions, because this priority rule currently only applies in the context of the Tick-Worse functionality, as described above, which the Exchange proposes to decommission. The Exchange proposes to delete this rule no later than July 31, 2017, along with the decommissioning of the Tick-Worse functionality.

ISE Rule 713(f) provides that if a Member purchases (sells) one (1) or more options contracts of a particular series at a particular price, it shall at the next lower (higher) price at which there are Professional Orders or market maker quotes, have priority over such Professional Orders and market maker quotes in purchasing (selling) up to the equivalent number of options contracts of the same series that it purchased (sold) at the higher (lower) price, but only if the purchase (sale) so effected represents the opposite side of a transaction with the same offer (bid) as the earlier purchase (sale). Although the language of Rule 713(f) is more general, the Exchange's intent was to apply split price priority solely to the Tick-Worse functionality.

Example:

—Primary Market Maker has opted into tick worse functionality and selected to tick worse and post 10 contracts at a penny worse than their original quote.

—Primary Market Maker quote for 10 contracts bid at $1.00 and 10 contracts offered at $1.02

—Additionally, there is a Priority Customer order to buy 5 contracts at $0.99, and a Competitive Market Maker quote for 10 contracts bid at $0.99 and 10 contracts offered at $1.02

—A member enters a sell order for 20 contracts at $0.99

—This order will trade as follows:

- 10 contracts trade at $1.00 with the Primary Market Maker bid quote, and Primary Market Maker is ticked worse to 10 contracts bid at $0.99
- 5 contracts trade at $0.99 with the Priority Customer order due to customer priority
- 5 contracts trade at $0.99 with the Primary Market Maker's ticked worse quote due to the split price priority rule; 0 contracts trade with the Competitive Market Maker bid quote

The Exchange represents that Tick-Worse has historically only ever applied in the context of the split price priority rule in ISE Rule 713(f). Furthermore, the Exchange has historically only ever awarded priority pursuant to ISE Rule 713(f) for split price transactions that occur in the Tick-Worse functionality, and the existing rule should have been clarified to more accurately reflect its current application. Nonetheless, the Exchange is now proposing to delete the rule text in its entirety along with decommissioning the Tick-Worse functionality, as proposed above.

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.

''Tick-Worse'' Functionality

As noted above, the Exchange originally offered Tick-Worse as an optional feature to help market makers meet their continuous quoting obligations under the Exchange's rules. The Exchange believes that its proposal is consistent with the Act because it has found that the Tick-Worse feature is rarely used today[11] as almost all market makers use their own systems to send refreshed quotations when their displayed quotations are exhausted. The Exchange therefore believes that it is consistent with the Act to propose to discontinue use of this functionality prior to the migration to INET. Because one member continues to utilize the functionality, the Exchange believes that providing advance notice of the intent to decommission of this functionality will serve to prepare Members as to the upcoming change with INET.

As discussed above, the Exchange originally offered Tick-Worse as an optional feature to help market makers meet their continuous quoting obligations under the Exchange's rules. The Exchange has found, however, that the Tick-Worse feature is rarely used today as almost all market makers use their own systems to send refreshed quotations when their displayed quotations are exhausted. The Exchange therefore believes that decommissioning Tick-Worse and providing advance notice to its members, is consistent with the Act because it eliminates any investor uncertainty related to the status of this functionality.

Split Price Priority

The Exchange also believes that its proposal to delete the split price priority rule in Rule 713(f) protects investors and the public interest because it removes rule text that became obsolete with the decommission of the Tick-Worse functionality. As described above, the split price priority rule only applies to the Tick-Worse functionality. Because the Rule is more general than its current, specific application, however, the Exchange believes that the continued presence of Rule 713(f) in its rules even after retiring the Tick-Worse functionality will be confusing to its members and investors. By removing obsolete rule text that only applies in the context of Tick-Worse, the Exchange is eliminating any potential for confusion about how its systems operate.

assigned options class is open for trading on the Exchange.

[7] Currently, this functionality is being used by one market maker on the Exchange.

[8] The Exchange notes that it similarly decommission Tick-Worse on ISE Gemini on February 21, 2017. *See* Market Information Circular 2017–10.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] It is only being used by one market maker.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to have any competitive impact but rather request the decommission of a rarely-used functionality on the Exchange and relatedly, to remove the rule text that this functionality supports from the Exchange's rulebook, thereby reducing investor confusion and making the Exchange's rules easier to understand and navigate.

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 [12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

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–2017–27 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–2017–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2017–27 and should be submitted on or before April 13, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–05744 Filed 3–22–17; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 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.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80271; File No. SR–NYSEARCA–2017–24]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 6.80 To Make Permanent a Program That Allows Transactions To Take Place at a Price That Is Below $1 per Option Contract

March 17, 2017.

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 March 2, 2017, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.80 to make permanent a program that allows transactions to take place at a price that is below $1 per option contract. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.80 to make permanent a program that allows transactions to take place at a price that is below $1 per option contract.[4] The program is currently subject to a pilot that is scheduled to expire on July 5, 2017.[5]

An ''accommodation'' or ''cabinet'' trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Trading is generally conducted in accordance with Exchange Rules, except as provided in Exchange Rule 6.80, Accommodation Transactions (Cabinet Trades), which sets forth specific procedures for engaging in cabinet trades.

Rule 6.80 currently provides that cabinet transactions at a price of $1 per option contract to occur via open outcry in any options series open for trading on the Exchange, except option classes participating in the Penny Pilot Program.[6] Rule 6.80 provides that bids and offers (whether opening or closing a position) at a price of $1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market Maker or be provided in response to a request by a Trading Official, a Floor Broker or a Market Maker, but must yield priority to all resting orders in the Cabinet (those orders held by the Trading Official, and which resting cabinet orders may be closing only). If the buyer and the seller yield to resting cabinet orders, opening cabinet bids can trade with opening cabinet offers at $1 per option contract.

The Exchange amended the cabinet procedures to allow transactions to take place in open outcry at a price of at least $0 but less than $1 per option contract. This amendment expires on July 5, 2017. These lower-priced transactions are permitted to be traded pursuant to the same procedures applicable to $1 cabinet trades, except that (i) bids and offers for opening transactions are permitted only to accommodate closing transactions, and (ii) transactions in option classes participating in the Penny Pilot Program are permitted. The Exchange believes that allowing a price of at least $0 but less than $1 better accommodates the closing of options positions in series that are worthless or not actively traded, particularly when there has been a significant move in the price of the underlying security, resulting in a large number of series being out-of-the-money. For example, a market participant might have a long position in a put series with a strike price of $30 and the underlying stock might be trading at $100. In such an instance, there is likely no market to close-out the position, even at the $1 cabinet price.

As with other accommodation liquidations under Rule 6.80, transactions at prices less than $1 are not disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 6.80, the transactions are exempt from the Consolidated Options Audit Trail (''COATS'') requirements of Exchange Rule 6.67, Order Format and System Entry Requirements. However, the Exchange maintains quotation, order and transaction information for such transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than $1 must be reported to the Exchange following the close of each business day.

The Exchange notes that while the level of liquidation trades is not meaningful, such trades serve an essential purpose in that they allow market participants to close out options positions that are worthless or not actively trading. To illustrate, in 2016, there were a total of 558 Cabinet trades. Of these, 50 trades comprising 47,106 contracts were executed at a price of $0.01, while the remaining 508 trades comprising 208,078 contracts were executed for a premium of less than $0.01. The Exchange believes this level of trading demonstrates the benefit of the current program to market participants.

In support of making the program permanent, the Exchange represents that there are no operational issues in processing and clearing Cabinet trades in penny and sub-penny increments. Each Cabinet trade is input manually into the clearing system, and is then submitted for settlement at the Options Clearing Corporation. Additionally, OTP Holders and OTP Firms have not raised any concerns with the processing of Cabinet trades.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[8] of the Act in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that liquidation trades promote competition and afford market participants the opportunity to close out their options positions. The Exchange believes that permanently approving the rules that allow for liquidations at a price less than $1 per option contract would better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where cabinet trades are not otherwise permitted.

The Exchange believes that approving the program on a permanent basis is also consistent with the Act. With respect to the level of liquidation trades transacted on the Exchange, the Exchange believes that the data gathered provides meaningful support to make the program permanent.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that approving the program on a permanent basis will not impact competition, as it will continue to facilitate OTP Holders' ability to close positions in worthless or not actively traded series.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period *up to 90 days* (i) as the Commission may designate if it finds such longer period

[4] *See* Commentary .01 to Rule 6.80.

[5] *See* Securities Exchange Act Release No. 79565 (December 15, 2016), 81 FR 93723 (December 21, 2016) (SR–NYSE Arca–2016–163). The Exchange initially adopted the program in 2010. *See* Securities Exchange Act Release No. 63476 (December 8, 2010), 75 FR 77930 (December 14, 2010) (SR–NYSE Arca–2010–109).

[6] The $1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as $0.01 per share (or $1.00 per option contract with a 100 share multiplier).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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–NYSEARCA–2017–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2017–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2017–24 and should be submitted on or before April 13, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–05742 Filed 3–22–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80272; File No. SR–NYSEMKT–2017–13]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Rule 968NY To Make Permanent a Program That Allows Transactions To Take Place at a Price That Is Below $1 per Option Contract

March 17, 2017.

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 March 2, 2017, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 968NY to make permanent a program that allows transactions to take place at a price that is below $1 per option contract. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 968NY to make permanent a program that allows transactions to take place at a price that is below $1 per option contract.[4] The program is currently subject to a pilot that is scheduled to expire on July 5, 2017.[5]

An ''accommodation'' or ''cabinet'' trade refers to trades in listed options on the Exchange that are worthless and typically not actively traded. Trading is generally conducted in accordance with Exchange Rules, except as provided in Exchange Rule 968NY, Accommodation Transactions (Cabinet Trades), which sets forth specific procedures for engaging in cabinet trades.

Rule 968NY currently provides that cabinet transactions at a price of $1 per option contract to occur via open outcry in any options series open for trading on the Exchange, except option classes participating in the Penny Pilot Program.[6] Rule 968NY provides that bids and offers (whether opening or closing a position) at a price of $1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market Maker or be provided in response to a request by a Trading Official, a Floor Broker or a Market Maker, but must yield priority to all resting orders in the Cabinet (those orders held by the Trading Official, and which resting cabinet orders may be closing only). If the buyer and the seller yield to resting cabinet orders, opening cabinet bids can trade with opening cabinet offers at $1 per option contract.

The Exchange has amended the cabinet procedures to allow transactions to take place in open outcry at a price of at least $0 but less than $1 per option

[9] 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] *See* Commentary .01 to Rule 968NY.

[5] *See* Securities Exchange Act Release No. 79564 (December 15, 2016), 81 FR 93716 (December 21, 2016) (SR–NYSEMKT–2016–116). The Exchange initially adopted the program in 2010. *See* Securities Exchange Act Release No. 63475 (December 8, 2010), 75 FR 77932 (December 14, 2010) (SR–NYSE Amex–2010–114).

[6] The $1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as $0.01 per share (or $1.00 per option contract with a 100 share multiplier).

contract. This amendment expires on July 5, 2017. These lower-priced transactions are permitted to be traded pursuant to the same procedures applicable to $1 cabinet trades, except that (i) bids and offers for opening transactions are permitted only to accommodate closing transactions, and (ii) transactions in option classes participating in the Penny Pilot Program are permitted. The Exchange believes that allowing a price of at least $0 but less than $1 better accommodates the closing of options positions in series that are worthless or not actively traded, particularly when there has been a significant move in the price of the underlying security, resulting in a large number of series being out-of-the-money. For example, a market participant might have a long position in a put series with a strike price of $30 and the underlying stock might be trading at $100. In such an instance, there is likely no market to close-out the position, even at the $1 cabinet price.

As with other accommodation liquidations under Rule 968NY, transactions at prices less than $1 are not disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 968NY, the transactions are exempt from the Consolidated Options Audit Trail (''COATS'') requirements of Exchange Rule 955NY, Order Format and System Entry Requirements. However, the Exchange maintains quotation, order and transaction information for such transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than $1 must be reported to the Exchange following the close of each business day.

The Exchange notes that while the level of liquidation trades are not meaningful, such trades serve an essential purpose in that they allow market participants to close out options positions that are worthless or not actively trading. To illustrate, in 2016, there were a total of 222 Cabinet trades. Of these, 148 trades comprising 112,257 contracts were executed at a price of $0.01, while the remaining 74 trades comprising 165,868 contracts were executed for a premium of less than $0.01. The Exchange believes this level of trading demonstrates the benefit of the current program to market participants.

In support of making the program permanent, the Exchange represents that there are no operational issues in processing and clearing Cabinet trades in penny and sub-penny increments. Each Cabinet trade is input manually into the clearing system, and is then submitted for settlement at the Options Clearing Corporation. Additionally, ATP Holders have not raised any concerns with the processing of Cabinet trades.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[8] of the Act in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that liquidation trades promote competition and afford market participants the opportunity to close out their options positions. The Exchange believes that permanently approving the rules that allow for liquidations at a price less than $1 per option contract would better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where cabinet trades are not otherwise permitted.

The Exchange believes that approving the program on a permanent basis is also consistent with the Act. With respect to the level of liquidation trades transacted on the Exchange, the Exchange believes that the data gathered provides meaningful support to make the program permanent.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that approving the program on a permanent basis will not impact competition, as it will continue to facilitate ATP Holders the ability to close positions in worthless or not actively traded series.

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.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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–NYSEMKT–2017–13 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–NYSEMKT–2017–13. 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 Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for

inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2017–13 and should be submitted on or before April 13, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–05743 Filed 3–22–17; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9923]

Notice of Public Meeting

SUMMARY: The Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission will meet on May 3, 2017.

DATES: The meeting will take place via teleconference on May 3, 2017, from 4 p.m. to 5 p.m. Eastern time.

Meeting Details: The teleconference call-in number is toll-free 877–336–1831, passcode 6472335, and will have a limited number of lines for members of the public to access from anywhere in the United States. Callers will hear instructions for using the passcode and joining the call after dialing the toll-free number noted. Members of the public wishing to participate in the teleconference must contact the OES officer in charge as noted in the **FOR MORE INFORMATION CONTACT** section below no later than close of business on Monday, May 1, 2017.

FOR FURTHER INFORMATION CONTACT: Colin Brinkman, Office of Marine Conservation. Telephone (202) 647–1952, email address *brinkmancc@state.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, notice is given that the Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission (NPAFC) will meet on the date and time noted above. The panel consists of members from the states of Alaska and Washington who represent the broad range of fishing and conservation interests in anadromous and ecologically related species in the North Pacific. Certain members also represent relevant state and regional authorities. The panel was established in 1992 to advise the U.S. Section of the NPAFC on research needs and priorities for anadromous species, such as salmon, and ecologically related species occurring in the high seas of the North Pacific Ocean. The upcoming Panel meeting will focus on a review of the agenda for the 2017 annual meeting of the NPAFC (May 15–19, 2017; Victoria, Canada). Background material is available from the point of contact noted above and by visiting *www.npafc.org.*

Dave Hogan,

Acting Director, Office of Marine Conservation, Department of State.

[FR Doc. 2017–05796 Filed 3–22–17; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 9926]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''Robert Rauschenberg'' Exhibition

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that the objects to be included in the exhibition ''Robert Rauschenberg,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York, New York, from on or about May 21, 2017, until on or about September 17, 2017, at the San Francisco Museum of Modern Art, San Francisco, California, from on or about November 4, 2017, until on or about March 25, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–05797 Filed 3–22–17; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 290 (Sub-No. 389X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Roanoke, Va.

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152, subpart F—*Exempt Abandonments* to abandon an approximately 0.5-mile line of railroad, between mileposts R 4.0 and R 4.5, in Roanoke, Va. (the Line).[1] The Line traverses United States Postal Service Zip Code 24015.

NSR has certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) and 1105.8(c) (environmental and historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial

[9] 17 CFR 200.30–3(a)(12).

[1] On March 15, 2017, NSR filed a corrected map of the Line.

revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will become effective on April 22, 2017, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 3, 2017. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 12, 2017, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

NSR has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by March 28, 2017. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or interim trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by March 23, 2018, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*WWW.STB.GOV*.''

Decided: March 20, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Marline Simeon,

Clearance Clerk.

[FR Doc. 2017–05817 Filed 3–22–17; 8:45 am]

BILLING CODE 4915–01–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,700. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Federal Aviation Administration Written Re-Evaluation, Adoption, and Finding of No Significant Impact and Record of Decision of Department of Navy's Final Environmental Impact Statement for the Navy's Environmental Assessment for the Mariana Islands Range Complex Airspace

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of record of decision.

SUMMARY: The Federal Aviation Administration (FAA) announces its decision to adopt the Department of the Navy's (DoN) Environmental Assessment/Overseas Environmental Assessment (EA/OEA) for the Mariana Islands Range Complex Airspace. In accordance with the National Environmental Policy Act of 1969 (''NEPA''), the Council on Environmental Quality's (''CEQ'') regulations implementing NEPA, and other applicable authorities, including the Federal Aviation Administration (FAA) Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8–2, and FAA Order JO 7400.2K, ''Procedures for Handling Airspace Matters,'' paragraph 32–2–3, the FAA has conducted an independent review and evaluation of the DoN's Final Mariana Islands Range Complex (MIRC) Airspace EA/OEA dated June 2013. As a cooperating agency with responsibility for approving special use airspace the FAA provided subject matter expertise and closely coordinated with the DoN during the environmental review process, including preparation of the Draft EA/OEA and the Final EA/OEA. Based on its independent review and evaluation, the FAA has determined the Final EA/OEA, including its supporting documentation, as incorporated by reference, and other supporting documentation incorporated by reference for FAA's Written Re-Evaluation and Adoption of Final EA/OEA, adequately assesses and discloses the environmental impacts of the for Mariana Islands Range Complex Airspace, and that adoption of the Final EA/OEA by the FAA is authorized by regulation. FAA included the Written Re-Evaluation as part of the Adoption and FONSI–ROD because the DoN's FONSI is more than three years old. Accordingly, the FAA adopts the Final EA/OEA, and takes full responsibility for the scope and content that addresses the proposed changes to Special Use Airspace for MIRC.

FOR FURTHER INFORMATION CONTACT: Paula Miller, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7378.

SUPPLEMENTARY INFORMATION:

Background

In December 2012, in accordance with the National Environmental Policy Act and its implementing regulations, the DoN released a Draft EA/OEA. The Draft EA/OEA presented the potential environmental consequences of the DoN's proposal to establish Special Use Airspace to support Navy training activities that involve the use of advanced weapons systems. The DoN is the proponent for the MIRC Airspace and is the lead agency for the preparation of the EA/OEA, and the DoN issued their FONSI on June 15, 2013. As a result of public, agency, and tribal comments during the 46-day public comment period from December 20, 2012 through February 4, 2013 on the Draft EA/OEA, and the FAA aeronautical review process, the DoN, FAA, other federal and state agencies, and tribal governments have consulted to mitigate concerns while continuing to meet national defense training requirements. The FAA is a cooperating agency responsible for approving Special Use Airspace as defined in 40 CFR 1508.5.

Implementation

The FAA is establishing Restricted Area 7201A and Warning Areas 11, 12, and 13. The MIRC legal descriptions have been modified to identify the correct US Territory from the description in the Notice of Proposed Rulemaking published in the **Federal Register** (80 FR 51498) on August 25, 2015, and circularization to the public

on September 15, 2015 with Docket 15–AWP–4NR. The revised legal descriptions do not change the Special Use Airspace request or the analysis done in the Final EA/OEA and the Aeronautical Study. The modification to the legal description did not change the area of analysis; therefore, the environmental and aeronautical analyses are still valid. The legal descriptions for the MRIC Airspace established, as noted in this notice, will be published in the **Federal Register** as a Final Rule and in the National Flight Data Digest (NFDD) with a June 22, 2017 effective date. A copy of the FAA Written Re-Evaluation/FONSI–ROD is available on the FAA Web site.

Right of Appeal

The Written Re-evaluation, the Adoption, and FONSI–ROD for the changes to the MIRC Airspace constitutes a final order of the FAA Administrator and is subject to exclusive judicial review under 49 U.S.C. 46110 by the U.S. Circuit Court of Appeals for the District of Columbia or the U.S. Circuit Court of Appeals for the circuit in which the person contesting the decision resides or has its principal place of business. Any party having substantial interest in this order may apply for review of the decision by filing a petition for review in the appropriate U.S. Court of Appeals no later than 60 days after the order is issued in accordance with the provisions of 49 U.S.C. 46110.

Dated: March 15, 2017.

Richard Roberts,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2017–05800 Filed 3–22–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2017–07]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of regulations. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before April 12, 2017.

ADDRESSES: You may send comments identified by docket number FAA–2016–7647 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *deana.stedman@faa.gov,* phone (425) 227–2148.

This notice is published pursuant to 14 CFR 11.85.

Issued in Renton, Washington, on February 8, 2017.

Victor Wicklund,

Manager, Transport Standards Staff.

Petition for Exemption

Docket No.: FAA–2016–7647.

Petitioner: Textron Aviation Inc.

Section of 14 CFR Affected: § 25.981(a)(3).

Description of Relief Sought: The petitioner seeks an exemption from the requirements of 14 CFR 25.981(a)(3) at Amendment 25–125, with respect to fuel tank ignition prevention as it relates to lightning protection of fuel tank structure and systems for the Model 700 airplane. This petition is made in accordance with FAA Policy PS–ANM–25.981–02 dated June 24, 2014.

[FR Doc. 2017–05238 Filed 3–22–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2016–0033]

Motorcyclist Advisory Council to the Federal Highway Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of extension of nomination deadline.

SUMMARY: The FHWA is announcing the extension of the deadline for nomination applications for the Motorcyclist Advisory Council (MAC) until April 15, 2017.

DATES: The deadline for nominations for MAC membership is extended to April 15, 2017.

ADDRESSES: All nomination materials should be emailed to *MAC-FHWA@dot.gov* or mailed attention to Mr. Michael Griffith, Federal Highway Administration, Office of Safety, Room E71–312, 1200 New Jersey Ave. SE., Washington, DC 20590. Any person needing accessibility accommodations should contact Michael Griffith at (202) 366–9469.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Griffith, Office of Safety, (202) 366–9469 or *MAC-FHWA@dot.gov;* 1200 New Jersey Ave. SE., Washington, DC 20590; or Ms. Seetha Srinivasan, Office of the Chief Counsel—Legislation, Regulations, and General Law Division, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–4099 or *Seetha.Srinivasan@dot.gov.*

SUPPLEMENTARY INFORMATION: The FHWA published its notice establishing the MAC and soliciting nominations for

MAC membership on January 9, 2017, at 82 FR 2436. This notice extends the deadline for submitting nomination applications to April 15, 2017. Interested parties should refer to the January 9th notice for application submission instructions.

Issued on: March 17, 2017.

Walter C. Waidelich, Jr.

Acting Deputy Administrator, Federal Highway Administration.

[FR Doc. 2017–05764 Filed 3–22–17; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Announcement Type: Notice and Request for Public Comment.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Community Development Financial Institutions Fund (CDFI Fund), U.S. Department of the Treasury, is soliciting comments concerning the Annual Certification and Data Collection Report Form.

DATES: Written comments must be received on or before May 22, 2017 to be assured of consideration.

ADDRESSES: Submit your comments via email to Tanya McInnis, Certification, Compliance Monitoring and Evaluation (CCME) Acting Program Manager, CDFI Fund, at *ccme@cdfi.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Tanya McInnis, Acting CCME Program Manager, CDFI Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's Web site at *http://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Certification and Data Collection Report Form.

OMB Number: 1559–0046.

Abstract: This information collection captures information related to continuing compliance with certification standards for Community Development Financial Institutions (CDFI) and other data associated with the finances and activities of CDFIs. The revised document adds nine yes/no questions regarding management and organizational changes.

Type of Review: Regular Review.

Affected Public: Certified CDFIs.

Estimated Number of Respondents: 1,000.

Estimated Annual Time per Respondent: 8 hours.

Estimated Total Annual Burden Hours: 8,000 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record and may be published on the CDFI Fund Web site at *http://www.cdfifund.gov.* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: Pub. L. 104–13; 12 CFR 1805; 12 CFR 1806; 12 CFR 1807; 12 CFR 1808.

Mary Ann Donovan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2017–05811 Filed 3–22–17; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 1099–S, Proceeds from Real Estate Transactions.

DATES: Written comments should be received on or before May 22, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Proceeds from Real Estate Transactions.

OMB Number: 1545–0997.

Form Number: 1099–S.

Abstract: Internal Revenue Code section 6045(e) and the regulations there under require persons treated as real estate brokers to submit an information return to the IRS to report the gross proceeds from real estate transactions. Form 1099–S is used for this purpose. The IRS uses the information on the form to verify compliance with the reporting rules regarding real estate transactions.

Current Actions: New Box 5 was added to identify foreign investors in US Real Property.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Responses: 2,573,400.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 411,744.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate

of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 13, 2017.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–05592 Filed 3–22–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 1116, Foreign Tax Credit (Individual, Estate, or Trust).

DATES: Written comments should be received on or before May 22, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

Requests for additional information or copies of the form and instructions should be directed to Sara Covington, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Foreign Tax Credit (Individual, Estate, or Trust).

OMB Number: 1545–0121.

Form Number: 1116.

Abstract: Form 1116 is used by individuals (including nonresident aliens), estates, or trusts who paid foreign income taxes on U.S. taxable income, to compute the foreign tax credit. This information is used by the IRS to determine if the foreign tax credit is properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 4,143,255.

Estimated Time per Respondent: 6.05 hours.

Estimated Total Annual Burden Hours: 25,066,693.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 13, 2017.

Laurie Brimmer,

IRS Reports Clearance Officer.

[FR Doc. 2017–05591 Filed 3–22–17; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 82 Thursday,
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Part II

Department of Justice

Drug Enforcement Administration

Wesley Pope, M.D.; Decision and Order; Notice

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 15–8]

Wesley Pope, M.D.; Decision and Order

On October 8, 2014, the former Deputy Assistant Administrator of the then-Office of Diversion Control, issued an Order to Show Cause to Wesley Pope, M.D. (hereinafter, Respondent), of Newcastle, Oklahoma. ALJ Ex. 1, at 1. The Show Cause Order proposed the denial of Respondent's application for a new Certificate of Registration as a practitioner in schedules II through V, on the ground that his registration would be ''inconsistent with the public interest.'' *Id.* (citing 21 U.S.C. 823(f)).

As support for the proposed denial, the Government alleged that ''[f]rom on or about August 25, 2011 through on or about May 9, 2012, [Respondent] issued controlled substance prescriptions to [patient] B.B. in violation of Federal and Oklahoma . . . law.'' *Id.* The Government specifically alleged that ''on each of the occasions that [Respondent] issued controlled substance prescriptions to B.B.,'' Respondent was ''aware . . . that he presented a high risk of abuse and/or diversion of controlled substances, as evidenced by the red flags documented in his patient file, such as aberrant urine drug tests, a request for early refills, and a claim of stolen drugs.'' *Id.* The Government then alleged that Respondent ''failed to address and, in fact, ignored these red flags, continuing to issue B.B. controlled substances [sic] prescriptions in the face of mounting evidence that he was misusing, abusing, and/or diverting the controlled substances [he was] prescribing.'' *Id.* The Government further alleged that ''[t]he prescriptions [Respondent] issued to B.B. on each visit were below the standard of care in Oklahoma and fell outside the usual course of professional practice.'' *Id.* at 1–2 (citing 21 CFR 1306.04(a); Okla. Admin. Code § 435:10–7–4; *id.* § 435:70–7–11 [1]; Okla. Bd. of Med. Lic. & Super., *Use of Controlled Substances for the Treatment of Pain* (Mar. 10, 2005)). The Show Cause Order then alleged that on 11 different dates, Respondent issued to B.B. prescriptions for such drugs as hydrocodone/acetaminophen, Opana (oxymorphone), fentanyl patches, morphine sulfate, oxycodone/acetaminophen, and Soma (carisoprodol) which were ''invalid.'' *Id.* at 2–6. The Government also provided detailed factual allegations pertaining to each of the prescriptions. *Id.*

Respondent requested a hearing on the allegations. The matter was then placed on the docket of the Office of Administrative Law Judges and assigned to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, CALJ). Following pre-hearing procedures, the CALJ conducted a hearing on April 7–8, 2015 in Oklahoma City, Oklahoma. During the hearing, both parties submitted documentary evidence; the Government elicited the testimony of several witnesses and Respondent testified on his own behalf.

On July 24, 2015, the CALJ issued his Recommended Decision (cited as R.D.). Therein, the CALJ found that the allegations were sustained only with respect to five of the dates on which Respondent prescribed (and with respect to four of these dates, only sustained in part). *See* R.D. 44, 46, 62, 64, 68. While the CALJ concluded that Respondent had issued these prescriptions outside of the course of professional practice and thus violated 21 CFR 1306.04(a), *id.* at 90, he further reasoned that Respondent's misconduct reflected ''inattention to detail [and] not intentional diversion.'' *Id.* at 82. He thus concluded that while the Government had made out a *prima facie* case to warrant some form of sanction, Respondent's conduct was not sufficiently egregious to warrant denial even though he found that ''Respondent was irresponsible in continuing to prescribe to this patient in the face of red flags of diversion, and in failing to document or even possess the ability to persuasively convey a medically-based justification for prescribing new controlled medication.'' *Id.* at 92–93. And even though Respondent had failed to accept responsibility and put forward no evidence of remedial measures he had undertaken, the CALJ recommended that he be granted a new registration subject to a one-year period of probation with various conditions. *Id.*

The Government filed Exceptions to the Recommended Decision and Respondent filed a Response to the Government's Exceptions. Thereafter, the record was forwarded to my Office for Final Agency Action.

Having considered the record in its entirety including the Recommended Decision, the Government's Exceptions, and Respondent's Response to the Government's Exceptions, I agree with the CALJ's findings and legal conclusion with respect to the first prescribing event (August 25, 2011). While I agree with the CALJ's legal conclusions that Respondent acted outside of the usual course of professional practice when he prescribed controlled substances during the third, fourth, tenth, eleventh, and twelfth prescribing events, I hold that several of the exceptions raised by the Government are well taken and that additional relevant evidence should be considered in review of the record. Based on my consideration of the record as a whole, I, as the ultimate fact-finder, conclude that a preponderance of the evidence supports the conclusions that Respondent knowingly diverted controlled substances by issuing prescriptions in violation of 21 CFR 1306.04(a) when he prescribed various schedule II controlled substances on 11 occasions, beginning on September 22, 2011 and ending on May 9, 2012.

I further find that Respondent's misconduct is egregious and establishes a *prima facie* case for denial. Because I also agree with the CALJ that the record reflects Respondent's ''almost dogged determination to accept no responsibility for any of his actions'' and that he ''has not presented even the most modest plan for any remedial action,'' R.D. 92, I conclude that his application should be denied.

The Government's Exceptions

In its Exceptions, the Government raises multiple contentions, several of which warrant discussion prior to making factual findings. The first of these is that the CALJ erroneously concluded that the Oklahoma Medical Board's Standards ''on which the Government relied were permissive rather than mandatory.'' Exceptions, at 5. Indeed, in making his legal conclusions, the CALJ repeatedly declined to give weight to the Government Expert's testimony on material issues, reasoning that the Expert's testimony was premised on his misunderstanding that the Board's regulations, in particular its documentation and recordkeeping rules, were mandatory rather than permissive.

Second, the Government maintains that the CALJ erroneously held that the Government failed to provide adequate notice to Respondent of its intent to rely on the various aberrant drug tests as part of its proof that various prescriptions were issued in violation of 21 CFR 1306.04(a). With respect to this exception, the Government argues that not only did it provide adequate notice, the aberrant nature of the various urine drug screens (UDS) was litigated by consent. Exceptions, at 15–25. It also takes exception to the CALJ's finding

[1] This is an apparent typographical error as there is no such provision. The parties, however, spent considerable time arguing as to whether Respondent complied with Okla. Admin. Code § 435:10–7–11, which governs the ''Use of Controlled Substances for the Management of Chronic Pain.''

that several of the UDSs were not aberrant.

The CALJ's Conclusion That the Board's Standards Are Permissive

Throughout his Recommended Decision, the CALJ repeatedly declined to give weight to the Government Expert's testimony that Respondent failed to conduct a medically adequate evaluation of B.B.'s pain complaint and establish medical necessity to justify the prescribing of controlled substances. The basis of the CALJ's reasoning was that the deficiencies identified by the Expert ''generally relate to a paucity of documented proof in the chart entries as to whether or how much various medical treatment considerations that he favors were considered by the Respondent in making his prescription decision.'' R.D. at 35. Based on his conclusion that the provisions of the Oklahoma Board's rules applicable to a physician's documentation of his evaluation of a patient and recordkeeping are ''permissive'' and not mandatory, the CALJ reasoned that ''Respondent's alleged lack of documentation . . . is likely not as fatal to the Respondent's adherence to the standard of care in Oklahoma as the Government expert claims.'' R.D. 16. I disagree.

With respect to the evaluation of the patient, the Oklahoma Rule states:

> A medical history and physical examination must be obtained, evaluated and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function and history of substance abuse. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.

Okla. Admin. Code § 435:10–7–11(1). And with respect to medical records, the Oklahoma Rule states in relevant part that ''[r]ecords should remain current'' and that ''[t]he physician should keep accurate and complete records.'' *Id.* § 435:10–7–11(6). The records are ''to include . . . the medical history and physical examination (including vital signs),'' ''diagnostic, therapeutic and laboratory results,'' ''evaluations, consultations and follow-up evaluations,'' ''treatment objectives,'' ''discussion of risks and benefits,'' ''informed consent,'' ''treatments,'' ''medications (included date, type, dosage and quantity prescribed),'' ''instructions and agreements and periodic reviews.'' *Id.* In the CALJ's view, because the provisions of the Oklahoma regulation applicable to the documentation of the physician's evaluation of his patient and his recordkeeping use the word ''should'' in expressing the State's rules, the obligations they impose are ''permissive.'' R.D. at 16.

The CALJ, however, cited no authority from either the Board or the Oklahoma courts definitively interpreting the word ''should'' as used in the context of these two provisions as ''permissive.'' *See, e.g., id.* at 6. Indeed, the CALJ's conclusion appears to have been based entirely on the fact that the Board's prior version of its intractable pain rule used such words as ''requires'' and ''must'' in setting forth a practitioner's obligations with respect to documentation and recordkeeping. *See* R.D. 87 n.147 (quoting Okla. Admin. Code § 435:10–7–11(b) (2004): ''[t]his rule requires that a diagnosis be documented'' and *id.* § 435:10–7–11(j): ''[a]ccurate and complete records to document compliance with this section must be kept''). In the CALJ's view, ''[t]he evolution of the [regulations] demonstrate [sic] that their permissive nature represents an intentional re-direction by Oklahoma.'' *Id.*

However, when the Board promulgated the current version of the rule in 2005, it simply noted that ''[t]he rule is being updated based on recommendations from the Federation of State Medical Boards.'' 22 Okla. Reg. 2096 (June 15, 2005); *see also* 22 Okla. Reg. 379 (Notice of Rulemaking Intent; Feb. 1, 2005). In short, the CALJ's reliance on the Board's decision to adopt the Federation of State Medical Board's model rule simply proves too much.

Furthermore, although the word ''should'' is susceptible to different meanings, when used in the context of legal requirements, it generally does not connote ''permission'' but rather obligation or duty. *United States* v. *Anderson,* 798 F.2d 919, 924 (7th Cir. 1986) (''The common interpretation of the word 'should' is 'shall' and thus a straight-forward construction of [the Code of Judicial Conduct] reveals that it imposes a mandatory rule of conduct upon a judge.'') [2]; *Wollschlaeger* v. *Farmer,* 814 F.Supp.2d 1367, 1376 (S.D.Fl. 2011) (''Generally, laws that provide for disciplinary action in the cases of violations or noncompliance are mandatory, not precatory or hortatory. . . .''); *see also Bureau of Prisons* v. *FLRA,* 737 F.3d 779, 787 (D.C. Cir. 2013) ('''Should' is typically used to express an obligation or duty.'') (citing *Webster's Third International Dictionary* 2104 (1976)); *see also Webster's Third International Dictionary* 2104 (defining ''should'' as ''used in auxiliary function to express duty, obligation, necessity, propriety or expediency'').

Moreover, reading the Board's documentation and recordkeeping provisions as permissive cannot be squared with the Oklahoma Medical Practice Act. *Cf. Wollschlaeger,* 814 F.Supp.2d at 1376 (rejecting interpretation that statute which used ''should'' was hortatory when State law provided that violations of provision constituted grounds for disciplinary action). Under the Medical Practice Act, a physician's ''[f]ailure to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient'' constitutes ''unprofessional conduct.'' 50 Okla. Stat. Ann. § 509(18). Another provision of the Medical Practice Act states that ''[a]dequate medical records to support diagnosis, procedures, treatment, or prescribed medications *must be produced and maintained.*'' *Id.* § 509(20) (emphasis added). And a further provision of the Medical Practice Act makes ''[p]rescribing . . . controlled substances or narcotic drugs without medical need in accordance with published standards'' ''unprofessional conduct.'' *Id.* § 509(16).

Thus, construing the Board's documentation and recordkeeping rules as permissive would be fundamentally inconsistent with the Medical Practice Act's provisions on documentation and recordkeeping, which are clearly mandatory. *See Abramski* v. *United States,* 134 S.Ct. 2259, 2267 n.6 (2014) (''[A] court should not interpret each word in a statute with blinders on, refusing to look at the word's function within the broader statutory context. As we have previously put the point, a 'provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.' '') (quoting *United Sav. Assn. of Tex.* v. *Timbers of Inwood Forest Associates, Ltd.,* 484 U.S. 365, 371 (1988)). *See also Jacobs* v. *New York Foundling Hosp.,* 577 F.3d 93, 99 (2d Cir. 2009).

Accordingly, the Board's Intractable Pain Rule's documentation and recordkeeping provisions are not

[2] As the Seventh Circuit also noted, ''as listed in *Roget's Thesaurus,* [the word ''should''] means 'be obliged, must . . . have to.' The common interpretation of the word 'should' is 'shall.' '' 798 F.2d at 924.

reasonably read as being permissive.[3] Indeed, in the Policy Statement it issued contemporaneously with the promulgation of the Rule, the Board provided further evidence that the documentation and recordkeeping requirements are not permissive. For example, the Board explained that ''[a]ll such prescribing [of controlled substances for pain] *must* be based on clear documentation of unrelieved pain. To be within the usual course of professional practice, a physician-patient relationship must exist and the prescribing *should* be based on a diagnosis and documentation of unrelieved pain.'' *Policy Statement,* at 2 (emphasis added). Were the CALJ's interpretation correct, what the Board required in the first sentence was then rendered permissive by the use of the word ''should'' in the following sentence. Indeed, if the word ''should'' rendered the rules permissive, a physician could prescribe controlled substances to his patient without even having formulated a diagnosis. This makes no sense and thus, the better view is that the words ''must'' and ''should'' have the same meaning: they impose mandatory obligations.

In its Policy Statement, the Board also stated that it ''will judge the validity of the physician's treatment of the patient based on available documentation.'' *Id.* And finally, the Board stated that it ''will not take disciplinary action against a physician for deviating from this policy when contemporaneous medical records document reasonable cause for deviation.'' *Id.* It makes no sense to advise physicians that the validity of their treatment decisions will be based on documentation and recordkeeping requirements if those provisions are not requirements at all, but rather, merely hortatory and aspirational pronouncements.

Accordingly, I do not agree that the Government Expert's testimony as to the deficiencies in Respondent's evaluations of B.B. was based on the Expert's mistaken understanding of the scope of the Oklahoma Board's documentation and recordkeeping standards. Thus, while I fully agree with the CALJ that the Expert's ''testimony predictably raised no issues regarding credibility,'' I disagree with the CALJ's assertion that the Expert's ''testimony was not without its own 'red flags.' '' R.D. 18. I therefore find that this exception is well taken.

The CALJ's Rulings That the Government Failed To Provide Adequate Notice of Its Intent To Rely on Various Urine Drug Screen Results as Probative Evidence of the Illegality of the Prescriptions

Throughout his Recommended Decision, the CALJ repeatedly declined to consider the Government's evidence that Respondent failed to address an aberrant urine drug screen which showed that his patient B.B. was not taking a controlled substance that had been prescribed to him. *See, e.g.,* R.D. at 38–39 n.75. In the CALJ's view, the Government did not provide adequate notice of its intent to rely on Respondent's failure to address an aberrant June 1UDS in either the Show Cause Order or its Pre-hearing Statements with respect to multiple prescriptions. *See id.* at 38–39 (Sept. 25, 2011 Rxs), 48 (Nov. 18 and Dec. 15, 2011 Rxs); 51 (Jan. 19, 2012 Rxs); 54 (Feb. 13, 2012 Rxs), 56 (Mar. 13, 2012 Rxs), 60 (April 12, 2012 Rxs), 64 n.121 (April 25, 2012 Rx). As support for his rulings, the CALJ maintained that ''the Agency has recently imposed an increased standard of notice on it administrative prosecutors.'' *Id.* at 39 n.75 (citing *Farmacia Yani,* 80 FR 29053, 29064 n.28 (2015); *Jana Marjenhoff,* 80 FR 29067, 29068 (2015)). A review of these decisions shows, however, that the Agency has not ''imposed an increased standard of notice'' [4] but simply applied the

[3] In a series of cases involving the State of Florida's former regulation entitled ''Standards for the Use of Controlled Substances for Treatment of Pain'' (Fla. Admin. Code r. 64B8–9.013 (2009)), which adopted nearly verbatim the FSMB's text (including the respective uses of the words ''must'' and ''should'') in setting that State's documentation standard with respect to the evaluation of the patient, the CALJ explained that ''[c]onscientious documentation is repeatedly emphasized as not just a ministerial act, but a key treatment tool and a vital indicator to evaluate whether the physician's prescribing practices are 'within the usual course of professional practice.' '' *See, e.g., Roni Dreszer,* 76 FR 19434, 19448–49 (2011). So too here.

[4] According to the CALJ, in *Farmacia Yani,* ''the Government's notice was deemed insufficient in that although the alleged misconduct was disclosed and pursued, it did not include the correct regulation subsection in its [Show Cause Order] and prehearing statement.'' R.D. 66 (citing 80 FR at 29064 n.28). This, however, misstates the case.

At issue in footnote 28 of *Farmacia Yani* was the Government's allegation that the pharmacy had filled Suboxone prescriptions which were clearly issued for maintenance or detoxification purposes by two physicians but which did not contain the requisite identification number or good faith statement establishing that the physician was authorized to prescribe Suboxone for these purposes. *See* 80 FR 29063–64. As the legal basis for the allegation, the Government cited 21 CFR 1306.04 and 1306.06. The first regulation includes, *inter alia,* subsection a, which makes it illegal for a pharmacist to knowingly fill a prescription issued outside of the usual course of professional practice and which lacks a legitimate medical purpose, and subsection c, which provides, in part, that a prescription may not be issued for maintenance or detoxification treatment unless ''the practitioner is in compliance with the requirements'' applicable to practitioners who prescribe Suboxone for maintenance or detoxification treatment. *See* 21 CFR 1306.04(a) & (c); *id.* § 1301.28 (requirements for prescribing Suboxone for this purpose); *see also id.* § 1306.06 (''A prescription for a controlled substance may only be filled by a pharmacist, acting in the usual course of his professional practice. . . .'').

While the Decision noted that the Government had not identified the specific subsection of 1306.04 which it alleged was violated, it did not hold that the ''notice was deemed insufficient.'' R.D. 66. Indeed, while the Decision rejected the Government's contention that the pharmacist acted outside of the usual course of professional practice in violation of 1306.04(a) and 1306.06 for lack of evidence, 80 FR at 29064, and further noted that 1306.04(c) ''impose[s] duties only on the issuer of [a] prescription which has been issued to provide maintenance or detoxification purposes,'' *id.* at n.28, the Decision nonetheless found that the pharmacy had violated another provision of the Agency's regulations. Specifically, the Decision found a violation based on 21 CFR 1306.05(f), which imposes ''[a] corresponding liability . . . upon the pharmacist . . . who fills a prescription not prepared in the form prescribed by DEA regulations, '' 21 CFR 1306.05(f), and 21 CFR 1306.05(b), which requires that such a prescription include either the prescriber's X number or good faith statement. *See* 80 FR at 29064 & n.28 (citation omitted).

Indeed, notwithstanding that the Government cited the wrong provision of the regulations, the respondent's principal did not dispute that her conduct in filling these prescriptions was a violation. *See* Respondent's Proposed Findings of Fact and Conclusions of Law, at 11 (Proposed Conclusion of Law #11: ''The second violation[] relates to buprenorphine prescriptions from two physicians who were not authorized to prescribe such prescriptions because they were not Data-waived practitioners. Physicians are issued a specific registration that is distinguished with an X number, and this number[] should be on the prescription. Farmacia Yani dispensed 29 prescriptions in total from these two doctors that did not have an X number.'') (citations omitted). Thus, this case does not support the CALJ's assertion that ''recent Agency precedent has imposed significantly tighter notice requirements on the Government.'' R.D. at 66.

The CALJ further asserted that ''[i]n *Marjenhoff,* . . . the Agency refused to allow the Government to rely on noticed conduct alleged as a violation of the public interest factors because it failed to specify that the conduct would be specifically considered under factor 5.'' R.D. 66 (citing 80 FR at 29068). Here again, this is a misstatement of the case.

Apparently, the CALJ's assertion refers to the Agency's declination to find that the respondent's conduct in intercepting a pharmacist's phone calls (who questioned the validity of a prescription the respondent had created for herself by forging the signature of the purported prescriber) constituted actionable misconduct under factor five. 21 U.S.C. 823(f)(5). This factor provides for liability based on ''such other conduct which may threaten public health and safety.'' *Id.*

Significantly, the Show Cause Order made no such allegation, and while the Government disclosed in its pre-hearing statement that it intended to elicit testimony from the pharmacist regarding his attempt to verify the prescription after it was rejected for payment by respondent's insurer, at no point in the proceedings did the Government rely on the evidence other than as proof that the ''[r]espondent illegally obtained hydrocodone on eleven occasions.'' *See* Govt.'s Proposed Findings of Fact and Conclusion of Law, at 14 (discussing the pharmacist's testimony as evidence that respondent ''forged and filled hydrocodone prescriptions to herself using [a PA's] DEA number. These actions constitute violations of 21 U.S.C. 843(a)(3) [and] 21

extensive body of judicial precedent that addresses the adequacy of notice in administrative adjudication, which, as the Second Circuit has explained, ''is so peculiarly fact-bound as to make every case unique.'' *Pergament United Sales, Inc.* v. *NLRB,* 920 F.2d 130, 135 (2d Cir. 1990) (quoted in *Marjenhoff,* 80 FR at 29068); *see also Marjenhoff,* 80 FR at 29067–68 (discussing court decisions on notice in administrative adjudication); *Farmacia Yani,* 80 FR at 29059 (same).

The CALJ also held that the Government could not rely on this evidence under the doctrine of litigation by consent—even though Respondent never objected to the Expert's testimony that the June 1 (and other tests) were aberrant and that Respondent failed to properly address the aberrant results—asserting that the Government had the duty to ''timely and affirmatively raise[] . . . this theory'' and failed to do so. *Id.* at 39 (citing *Odette Campbell,* 80 FR 41062, 41062 n.2 (2015)). This reasoning, however, is also based on a misreading of that case.[5]

''The primary function of notice is to afford [a] respondent an opportunity to prepare a defense by investigating the basis of the complaint and fashioning an explanation that refutes the charge of unlawful behavior.'' *Pergament United Sales, Inc.* v. *NLRB,* 920 F.2d 130, 135 (2d Cir. 1990) (citation omitted). Thus, as the courts have long noted, '' '[p]leadings in administrative proceedings are not judged by the standards applied to an indictment at common law.' '' *Aloha Airlines* v. *Civil Aeronautics Bd.,* 598 F.2d 250, 262 (D.C. Cir. 1979) (quoted in *CBS Wholesale Distributors,* 74 FR 36746, 36749 (2009)); *accord Citizens State Bank of Marshfield* v. *FDIC,* 751 F.2d 209, 213 (8th Cir. 1984). Moreover, an agency ''is not burdened with the obligation to give every [Respondent] a complete bill of particulars as to every allegation that [he] will confront.'' *Boston Carrier, Inc.* v. *ICC,* 746 F.2d 1555, 1560 (D.C. Cir. 1984).

Accordingly, even where the Government fails to disclose an allegation in the Order to Show Cause, ''an issue can be litigated if the Government otherwise timely notifies a [r]espondent of its intent to litigate the issue.'' *CBS Wholesale,* 74 FR at 36570. Moreover, while the Agency has held that ''the parameters of the hearing are determined by the prehearing statements,'' consistent with numerous court decisions, it has also recognized that even where an allegation was not raised in either the Show Cause Order or the pre-hearing statements, the parties may nonetheless litigate an issue by consent. *Pergament United Sales,* 920 F.2d at 135–37; *see also Duane* v. *Department of Defense,* 275 F.3d 988, 995 (10th Cir. 2002) (discussing *Facet Enterprises, Inc.,* v. *NLRB,* 907 F.2d 963, 974 (10th Cir. 1990); ''we held that the defendant had constructive notice of an alternate theory of liability not described in the formal charge when the agency detailed that theory during its opening argument and at other points during the hearing and when the defendant's conduct revealed that it understood and attempted to defend against that theory'').[6]

To be sure, ''[a]n agency may not base its decision upon an issue the parties tried inadvertently. Implied consent is not established merely because one party introduced evidence relevant to an unpleaded issue and the opposing party failed to object to its introduction. It must appear that the parties understood the evidence to be aimed at the unpleaded issue.'' *Yellow Freight System, Inc.,* v. *Martin,* 954 F.2d 353, 358 (6th Cir.1992) (citation omitted). Accordingly, where the Government's case ''focus[es] on another issue and [the] evidence of [an] uncharged violation [is] 'at most incidental,' '' the Government has not satisfied its constitutional obligation to provide a full and fair opportunity to litigate the issue and it cannot rely on the incidental issue as the basis for imposing a sanction. *Pergament,* 920 F.2d at 136 (quoting *NLRB* v. *Majestic Weaving Co.,* 355 F.2d 854, 861–62 (2d Cir. 1966)). However, the issue of whether an allegation ''has been fully and fairly litigated [by consent] is so peculiarly fact-bound as to make every case unique.'' *Id.* at 136.

Having reviewed the record, I find the Government's exception well taken and hold that the Government provided Respondent with adequate notice that both the aberrant nature of the June 1 drug test and his failure to address it would be at issue throughout the proceeding. Moreover, even if the Government failed to specifically reference the June 1 test by date in the Show Cause Order (and Pre-hearing Statements) with respect to several of the prescriptions, Respondent had adequate notice that it was at issue throughout the proceeding and indeed, had a full and fair opportunity to litigate the issue.

The Show Cause Order repeatedly provided notice that the aberrant nature of B.B.'s June 1 UDS and Respondent's failure to address it would be at issue in the proceeding. For example, paragraph 3 of the Show Cause order alleged that ''[f]rom on or about *August 25, 2011 through on or about May 9, 2012,* [Respondent] issued controlled substance[] prescriptions to B.B. in violation of Federal . . . law.'' ALJ Ex. 1, at 1 (emphasis added). The Show Cause Order then alleged that Respondent was ''*aware on each of the occasions that [he] issued controlled substance[] prescriptions* to B.B. that he presented a high risk of abuse and/or diversion of controlled substances, as evidenced by the red flags documented in his patient file, *such as aberrant*

CFR 1306.04. . . .''). Moreover, in its discussion of Factor Five, the Government's arguments were confined to arguing that the ''[r]espondent has failed to accept responsibility for her actions,'' that she had not ''present[ed] any mitigating evidence,'' and that she ''has demonstrated a pattern of actions that are against the public interest by inappropriately prescribing controlled substances . . . in 2005 and forging and filling prescriptions in 2011.'' *Id.* at 15–16.

Thus, contrary to the CALJ's statement, the Government never relied on this conduct as a separate ''violation of the public interest factors.'' R.D. at 66. Nor could it have, as the public interest factors do not impose substantive rules of conduct but are simply ''components of the public interest'' that ''shall be considered'' in determining whether to grant an application for a registration. *Penick Corp., Inc.* v. *DEA,* 491 F.3d 483, 490 (D.C. Cir. 2007) (citation omitted). Most importantly, at no point did the Government assert that this conduct should also be considered as a separate act of misconduct under Factor Five.

[5] In *Campbell,* the ALJ noted that '' 'the evidence indicate[d] that [the] [r]espondent did not follow adequate security procedures,' '' but then ''declined to consider the evidence on the ground that the Government did not provide adequate notice in either the Show Cause Order or its Prehearing Statements, notwithstanding that [the] [r]espondent did not object to the testimony.'' 80 FR at 41062 n.2 (other citation omitted). While the former Administrator observed that ''the record arguably support[s] a finding that the issue was litigated by consent,'' she did not consider the evidence because ''the Government did not take exception to the ALJ's ruling.'' *Id.*

Here, by contrast, the Government has taken exception to the CALJ's rulings that the issue has not been litigated by consent. *See* Gov. Exceptions, at 24–25. As for the CALJ's assertion that the issue was ''not timely'' raised by the Government, given that: (1) Respondent never objected to the testimony nor argued in its post-hearing brief that it did not have fair notice that the June 1 drug screen would be at issue throughout the proceeding, and (2) the CALJ did not rule that the Government could not rely on this theory until he issued his Recommended Decision, it is unclear how the Government could have timely raised the issue until it received the Recommended Decision and filed its Exceptions.

[6] *See also Grider Drug #1 & Grider Drug #2,* 77 FR 44070, 44077 n.23 (2012) (holding that while the Government did not provide adequate notice of its intent to litigate an allegation in either the Show Cause Order or its pre-hearing statements, where respondents ''did not object that the allegation was beyond the scope of the proceeding and that they were denied adequate notice of it'' and ''fully litigated the issue,'' the allegation was litigated by consent) (citing *Citizens State Bank,* 751 F.2d at 213; *Kuhn* v. *Civil Aeronautics Bd.,* 183 F.2d 839, 841–42 (D.C. Cir. 1950); and *Yellow Freight System, Inc.,* v. *Martin,* 954 F.2d 353, 358 (6th Cir. 1992)).

urine drug tests.'' *Id.* (emphasis added). And the Order then alleged that Respondent ''failed to address and, in fact, ignored these red flags, continuing to issue B.B controlled substance prescriptions in the face of mounting evidence that he was misusing, abusing, and/or diverting the controlled substances you were prescribing.'' *Id.*

In the allegations regarding the August 25, 2011 prescriptions, the Show Cause Order provided a detailed recitation of the factual basis for the allegation that the June 1, 2011 UDS was aberrant and that this ''should have indicated . . . that B.B. may have been misusing/abusing the alprazolam by consuming more than he had been prescribed, or diverting it.'' *Id.* at 2. As for the September 22, 2011 prescriptions, the Show Cause Order, after setting forth the factual basis for why the August 25 UDS was aberrant, proceeded to allege that Respondent ''did not address with B.B. *the now second aberrant drug screen in an approximately three month period,* despite noting in the record that you had 'extensively reviewed' B.B.'s '[p]ast medical history.' '' *Id.* at 3 (emphasis added). The Show Cause order then alleged that ''[y]ou took no other steps to monitor B.B.'s controlled substance use, such as requiring him [to] take another drug screen *due to the two failed ones,* conducting a new [prescription monitoring report] check, or requiring him to submit to a pill count.'' *Id.* (emphasis added).

In setting forth the allegations with respect to the October 6 and 20 prescriptions, the Show Cause Order alleged that ''[y]ou still did not address with B.B. *the two aberrant drug screens*'' and ''[y]ou still had not confronted B.B. about *the two aberrant drug screens*'' respectively. *Id.* at 4 (emphasis added). And with respect to the subsequent prescriptions, the Show Cause Order made multiple allegations such as that: (1) Respondent ''did not take any steps to monitor [B.B.'s] controlled substance[ ] use despite his history of misusing, abusing, or diverting controlled substances'' (Nov. 18, 2011 prescriptions); (2) ''despite [B.B.'s] history of substance misuse, abuse, and/or diversion, you did not take appropriate steps to monitor his controlled substance use before issuing him these new prescriptions'' (Jan. 19, 2012 prescriptions); and (3) Respondent again prescribed controlled substances ''without taking appropriate steps to monitor [B.B.'s] controlled substance use despite the persistent red flags of abuse and diversion he previously presented'' (Mar. 13, 2012 prescriptions).

Likewise, in its Pre-hearing Statement, the Government provided notice that ''Dr. Owen [its Expert] will testify that [Respondent] should have been aware from documentation in B.B.'s file of red flags that B.B. may have been abusing or diverting controlled substances prior to transferring his treatment to'' Respondent (the period in which the June 1 UDS was obtained), as well as notice setting forth the factual basis as for why the June 1 UDS was aberrant. ALJ Ex. 5, at 10, 12–13. With respect to the September 22, 2011 prescriptions, the Pre-hearing Statement provided notice that the medical file shows that Respondent ''never addressed with B.B. this now second aberrant UDS in an approximately three month period, despite noting in the record that [he] had 'extensively reviewed' B.B.'s past medical history'' and that Respondent ''took no other steps to monitor B.B.'s controlled substance use, such as requiring him to take another UDS *due to the two failed ones.*'' *Id.* at 14 (emphasis added).

Moreover, with respect to the October 6 prescriptions, the Pre-hearing Statement provided notice that ''Dr. Owen will testify that on this visit [Respondent] again failed to address with B.B. the two aberrant UDSs,'' and with respect to the October 20, 2011 prescriptions, ''the record lacks documentation that . . . he confronted B.B. *about the two aberrant UDSs.*'' *Id.* at 15–16 (emphasis added). And with respect to the later prescriptions, the Pre-hearing Statement provided notice that Dr. Owen ''will testify'' that Respondent ''also failed to take any steps to monitor B.B.'s controlled substances use despite B.B.'s history of misusing, abusing, or diverting controlled substances.'' *Id.* at 16. *See also id.* at 17 (Jan. 19 prescriptions; ''Dr. Owen will testify that despite the fact that this was B.B.'s first visit . . . in three months, and despite his history of substances misuse, abuse, and/or diversion, [Respondent] failed to take adequate steps to monitor B.B.'s controlled substance use before issuing him these new prescriptions''); *id.* at 19 (Mar. 13 prescriptions; providing notice that ''Dr. Owen will testify'' that Respondent again issued controlled substance prescriptions ''without taking appropriate steps to monitor B.B.'s controlled substance use despite the persistent red flags of abuse and diversion he previously presented'').

Thus, the Show Cause Order's allegations and the Pre-Hearing Statement's disclosure of the expected testimony provided Respondent with more than adequate notice that the results of the June 1, 2011 UDS and his failure to address it would be at issue throughout the proceeding. And even if I concluded otherwise, the record is clear that the issue was litigated by consent.

Notably, during its direct examination of Dr. Owen regarding the September 22, 2011 prescriptions, the Government asked Dr. Owen the following questions:

Q. Would the aberrant urine drug test from June 1 have shown up in a review of the history?

A. Yes.

Q. Would the aberrant drug test from August 25, 2011, have shown up in the history?

A. Yes.

Q. And were those aberrant drug tests part of this medical file as you received it?

A. Yes, it [sic] was.

Q. What—how does [Respondent] address the aberrant drug tests in this 9/22 patient file note[]?

A. It's [sic] completely ignored.

Q. What steps should [Respondent] have taken regarding the aberrant drug screens?

A. He should have acknowledged their existence and then taken some corrective action.

. . . .

Q. Does it appear that [Respondent] took any safeguard regarding the potential for diversion or abuse with the aberrant drug screens?

A. No.

Tr. 132–33.

Notably, Respondent did not object to any of this testimony. *See id.* Moreover, the Government asked similar questions of Dr. Owen regarding the later prescriptions, with no objection by Respondent. *See id.* at 136 (Oct. 6, 2011 visit; Q. ''Having reviewed the patient file, can you tell me what steps [Respondent] took on this date to address the two previous aberrant urine drug tests?'' A. ''The previous aberrant urine drug tests are ignored and not addressed.''); *id.* at 139 (Oct. 20, 2011visit: Q. ''What steps should [Respondent] have taken on this date?'' A. Respondent ''[s]hould have, particularly in light of the previous aberrant drug tests . . . sought psychological counseling for this patient.'').[7]

[7] *See also* Tr. 143 (Nov. 18 and Dec. 15, 2011 Rxs: Q. ''Is there any mention anywhere about the aberrant drug tests and the results being discussed with BB?'' A. ''No, there's not.''); *id.* at 147 (Jan. 19, 2102 visit and Rxs: Q. ''Is there any mention of the aberrant urine drug tests from June or August in this [patient file] during this visit?'' A. ''There is not.''); *id.* at 154 (Feb. 13 Rxs: testimony of Dr. Owen's that Respondent's counseling B.B. ''to take only as prescribed'' after Jan. 19 drug test was not an adequate safeguard against abuse and diversion, ''especially since this is the third aberrant drug test''); *id.* at 154–55 (Feb. 13 Rxs: Q. ''In the face of so many aberrant drug tests, what steps—what should [Respondent] have done?''); *id.* at 158 (Mar. 13, 2012 Rxs: Q. ''Are there any aberrant drug-taking behaviors here?'' A. ''There has [sic] been

Indeed, Respondent's counsel raised the issue when, in Respondent's case-in-chief, she asked him: 'Do you recall if you looked back at the previous drug tests?'' *Id.* at 283. Respondent answered: ''I don't recall, but I doubt I did'' and ''I wouldn't expect myself to.'' *Id.* Respondent's counsel then asked him if Dr. Schoelen had seen B.B.in June and July after the June 1 drug test, with Respondent answering ''[t]hat's correct.'' *Id.* Respondent then testified that the test was reported back to his former partner, who saw B.B. on June 29 and July 26, before testifying that he would have ''routinely looked at two, three different notes.'' *Id.* at 284.

Subsequently, on its cross-examination of Respondent with respect to what he looked at in the chart when he took over B.B.'s care, the Government asked: ''Did you see the June 1, 2011, UD[S], urine drug test?'' *Id.* at 390. Respondent's counsel raised no objection to the question and Respondent answered: ''I don't believe I did.'' *Id.* While Respondent then asserted that he ''assume[d]'' that Dr. Schoelen ''addressed every UDS,'' when pressed as to whether, based on his review of the file, Dr. Schoelen had ever addressed the June 1 UDS, Respondent answered: ''I didn't review his part of the chart.'' *Id.* at 390–91.

Thus, Respondent was clearly aware that his failure to address the June 1, 2011 drug test was at issue with respect to the entirety of his controlled substance prescribing to B.B. and in no sense was this ''an incidental issue'' in the case. *Pergament United Sales,* 920 F.2d at 136 (citation omitted). He also had a full and fair opportunity to litigate the issues of whether the June 1 (as well other tests) were aberrant and whether he properly addressed them during the course of his prescribing to B.B. Accordingly, I find the Government's exception well taken and will consider this evidence.[8]

Based on the preponderance of the evidence, I make the following findings.

Findings of Fact

Respondent is a family practice physician licensed by the Oklahoma State Board of Medical Licensure and Supervision. RX 1. Respondent graduated from the University of Oklahoma (OU) College of Medicine in 1989. Tr. 231. Thereafter, he did an internship through the OU ''Tulsa/Bartlesville program'' and ''the last two years of his residency'' in family medicine at OU in Oklahoma City. *Id.*

Respondent testified that upon completing his residency, he practiced family medicine and obstetrics for several years at several rural clinics. *Id.* at 234–35. He further explained that while working at one of the clinics, he was asked to become the medical director of a nursing home for terminal AIDS patients, which he did for approximately five years, after which he and Dr. Steve Schoelen bought a practice in Newcastle, Oklahoma which they named ''Tri-City Family Medicine.'' *Id.* at 235–36.[9] Respondent practiced family medicine at Tri-City from approximately 2000 through 2012. *Id.* at 245. Respondent further testified that he was board certified in family medicine until 2015. *Id.* at 247. Respondent testified that he could not reapply for board certification because he had not practiced family medicine for several years and does not ''qualify to show them my charts . . . to qualify to take the test.'' *Id.* at 248.

Respondent testified that due to the expense of malpractice insurance for his OB/GYN activities, he stopped delivering babies and focused on family medicine. *Id.* at 249. Respondent testified that he started seeing chronic pain patients around this time, but that Dr. Schoelen mostly saw these patients as he ''took much more of an interest in the pain patients and pain management.'' *Id.* He further testified that within days of Dr. Schoelen ''telling Medicaid that he would accept chronic pain patients on Medicaid, we were overwhelmed with referrals from the emergency rooms . . . in Oklahoma City.'' *Id.* at 253. According to Respondent, in response, Dr. Schoelen took continuing medical education (CME) classes and joined the American Academy of Pain Management. *Id.* The clinic also started using a pain management contract and contracted with a company for urine drug testing. *Id.* at 254.

Respondent testified that he did drug screens ''every three months'' and that any patient who received more than two Lortabs (hydrocodone with acetaminophen) a day would be subject to ''the guidelines of our pain management contract and rules.'' *Id.* at 256. Respondent further asserted that ''[s]ometimes we [would] send [patients] for a second opinion'' or for a ''modality that we didn't do'' such as ''an epidural or [a] further evaluation if something changed in their pain something changed neurologically.'' *Id.* He testified that he would obtain a Prescription Monitoring Program report for ''[e]very phone call for every prescription and every office visit.'' *Id.* at 263. He also testified that the practice did not replace lost or stolen medications and that he had terminated a substantial number of patients over the years. *Id.* at 279–80.

The Investigation

Respondent came to the attention of the authorities on or about May 10, 2012, when police in Norman, Oklahoma found Respondent's patient B.B., a 27-year old male (RX 3, at 2), who was ''semiconscious'' and ''appeared to be intoxicated'' in a vehicle parked ''in the center median of'' Interstate-35. Tr. 18; RX 3, at 2. The police also found ''several prescription bottles of opiate pain killers'' which had been prescribed to B.B. by Respondent. RX 3, at 2–3; Tr. 18. With B.B.'s consent, the police searched his cell phone and found text messages that ''indicated that [B.B.] was illegally buying and selling prescriptions drugs,'' as well as messages between B.B. and Respondent related to B.B.'s ''medical care, prescription dosages and prescriptions to be picked up by'' B.B. RX 3, at 3. In addition, the police found ''numerous sexually explicit messages'' that had been exchanged between Respondent's phone and B.B. *Id.;* Tr. 18. A Detective with the Norman police then contacted the Chief Investigator for the Oklahoma State Board of Medical Licensure and Supervision. Tr. 18. The Detective also notified a DEA Diversion Investigator (DI) that the police had found drugs in B.B.'s car and that the latter was a patient of Respondent; the Detective also asked the DI to attend an interview of B.B., who could not be interviewed until ''the next day'' because ''he was too intoxicated.'' *Id.* at 46.

In the meantime, the Chief Investigator, who was familiar with Respondent's background because the latter ''was on probation at that time for an incident that involved sexual misconduct,'' obtained a report from the Oklahoma Bureau of Narcotics Prescription Monitoring Program to ''see any prescriptions that were prescribed by [Respondent] to'' B.B. *Id.* at 18–19.

three previous.''); *id.* at 165–66 (Apr. 12, 2012 Rxs Q. ''Did he address any of the previous aberrant drug screens?'' A. ''He did not.''). Significantly, at no point did Respondent object to the questioning or testimony.

[8] The Government's remaining exceptions are discussed throughout this decision.

[9] Respondent also testified that for approximately three years (which are not specified in the record) and during which he was still practicing at his clinic, he was also the medical director of Unicare of Oklahoma, a subsidiary of WellPoint, and that his duties involved oversight of the clinics, reviewing chart audits, and that ''[w]e also were in charge of prior authorization.'' Tr. 237, 240. He also testified that he sat on WellPoint's national credentialing committee, which sat once a month for three hours and reviewed the credentials of practitioners applying to the company. *Id.* at 240. Respondent testified that he resumed working full time at Tri-City after the State cancelled its contract with Wellpoint to provide medical care to patients covered by the State's Medicaid program. *Id.* at 242.

The report showed that Respondent had written ''numerous controlled drug prescriptions'' for B.B. *Id.* at 19.

After reviewing the PMP report, the Chief Investigator notified the Board's Executive Director of his findings, *id.* at 21, who, on May 11, 2012, ordered the summary suspension of Respondent's medical license. *Id.; see also* RX 3, at 3. The same day, the Chief Investigator went to Respondent's clinic to obtain B.B.'s record, interview Respondent, and serve the suspension order on him. *Id.* at 21. While Respondent was not at the clinic, the Chief Investigator spoke with him by phone and made arrangements to return on May 14 (a Monday); the Chief Investigator also took B.B.'s chart. *Id.*

On May 11, 2012, the DI and two Detectives interviewed B.B., who ''confirmed that he was'' Respondent's patient. *Id.* at 48. B.B. admitted that ''he used the Opanas [oxymorphone] [10] himself'' but ''denied that he snorted them.'' *Id.* B.B. explained that ''[h]e crushed them up and put them in an energy drink, which he had in his vehicle . . . when he was found'' by the police. *Id.* B.B. also told the Investigators that ''[n]ot only was he a user of it, he also sold the medications.'' *Id.* After the interview, the DI was informed by the lead Detective that he had spoken to the Board's Chief Investigator and that the Board's Investigators were going to meet on Monday May 14 and go to Respondent's office. *Id.*

On that day, the Chief Investigator (accompanied by another Board Investigator), the DI and the lead Detective went to Respondent's clinic to interview him. *Id.* 25. During the interview, the Board's Chief Investigator confronted Respondent ''with some of the sexually graphic text messages sent from his phone to the patient.'' RX 3, at 3. While Respondent ''admitted that he may have made social comments to [B.B.],'' he ''would not answer any more questions without contacting his attorney.'' [11] *Id.* ''At that point,'' the Chief Investigator asked Respondent ''to allow him to examine'' his phone ''for text messages to'' B.B. *Id.* Respondent stated that ''his phone was not available because it had been run over with his tractor over the weekend.'' *Id.* The Chief Investigator then served the Board's suspension order on Respondent. RX 3, at 3. The DI then informed Respondent that because he did not have state authority, he could not maintain his DEA registration and asked Respondent to voluntarily surrender his registration; Respondent agreed to do so. Tr. 49; *see also* GX 1, at 1.

On September 13, 2012, the Board lifted Respondent's suspension.[12] RX 3, at 4. On October 4, 2012, Respondent applied for a new registration. GX 1, at 2. Because Respondent's application included a ''yes'' answer to the liability question which asked whether his state professional license had ever been sanctioned, the application was forwarded to the Oklahoma City field office and an investigation was opened. GX 2, at 1; Tr. 62, 65, 81.

Thereafter, a Diversion Investigator obtained a copy of B.B.'s patient file from the Board and provided it to Graves Owen, M.D., an expert in pain management, to review and determine whether Respondent lawfully issued the controlled substance prescriptions. Tr. 50–52, 55. The DI testified that he did not ask Dr. Owen to come to any specific conclusion and that Dr. Owen's compensation was not contingent on the conclusions he drew. *Id.* at 56. At the hearing, Dr. Owen testified that he has previously testified as to the ''standard of care in pain management'' and that he has testified for a defendant. *Id.* at 92.

The Government's Expert's Testimony as to the Standards of Medical Practice Applicable to the Prescribing of Controlled Substances To Treat Pain

Dr. Owen obtained a Bachelor of Science in chemistry and biology from Texas State University in 1985 and a Doctor of Medicine from the University of Texas Health Science Center (Houston) in 1990. *Id.* at 89–90; GX 4, at 1–2. After obtaining his M.D., Dr. Owen did a one year internship in internal medicine followed by a three-year residency in Anesthesiology at the UT Health Science Center; he then did a one-year fellowship in Pain Management at the University of Pittsburg's Pain Evaluation and Treatment Center. GX 4, at 1. Dr. Owen holds a Texas medical license and is board certified by the American Board of Pain Management and American Board of Anesthesiology. *Id.* at 2. He is a member of the American Pain Society, the American Academy of Pain Medicine, the American Academy of Pain Management and the Texas Pain Society. *Id.* at 7. With respect to the latter organization, Dr. Owen served on its Board of Directors from 2009 through 2012 and served as its President from 2012 through 2014. *Id.* at 8. He has also served on the Society's Legislative Committee and on its Educational Committee for multiple years. *Id.*

Dr. Owen's work experience includes more than 16 years at the Texas Pain Rehabilitation Institute (Sept. 1995 through Nov. 2011), which is an interdisciplinary pain management clinic. *Id.* at 2. Since February 2011, he has been a Peer Reviewer on Pain Medicine for the Journal of the American Academy of Pain Medicine. *Id.* He has also served as a member of the Medical Quality Review Panel and as an Arbiter on the Quality Assurance Panel of the Texas Department of Insurance, Division of Workers Compensation, Office of Medical Advisor. *Id.* He has written several articles and made more than 40 presentations on subjects related to pain management before both professional and governmental bodies, including on the use of urine drug testing in pain management. *Id.* at 4–9. The CALJ accepted Dr. Owen ''as an expert in pain management in Oklahoma and Texas.'' Tr. 91.

While Dr. Owen is licensed to practice medicine in Texas, he testified that he had reviewed Oklahoma's guidelines and policies. *Id.* at 93. Asked what the requirements are in Oklahoma for prescribing opioid controlled substances, Dr. Owen testified: ''Well, first you have to do an appropriate history and physical exam for whatever the chief complaint is. You need to get all pertinent previous medical records pertaining to this chief complaint.'' *Id.* at 94. As to why a physician needs to obtain the patient's medical records, Dr. Owen explained that: ''You want to know what has previously been performed as far as treatment elements and what resulted from those

[10] As discussed more fully below, Respondent issued B.B. prescriptions for Opana 10 mg. on multiple occasions, including on May 9, 2012 which B.B. filled the next day. GX 5, at 27.

[11] Subsequently, Respondent denied that he had exchanged these messages and attributed this conduct to his partner at the time, stating that he had allowed his partner to have ''access to his cell phone.'' RX 3, at 3; *see also* Tr. 415.

[12] On March 7, 2013, Respondent voluntarily submitted to the jurisdiction of the Board and agreed to the entry of an Order which found him guilty of unprofessional conduct in that he: (1)'' [v]iolated any provision of the medical practice act or the rule and regulations of the Board or of an action, stipulation, or agreement of the Board in violation of 59 O.S. § 509(13) and OAC 435:10–7–4(39)''; (2) ''[e]ngaged in the improper management of medical records in violation of OAC 435:10–7–4(36)''; and (3)'' [w]illfully betrayed a professional secret to the detriment of the patient[,] 12 O.S. § 509(3).'' RX 3, at 5. The Board did not, however, make any findings as to the legitimacy of the controlled substance prescriptions Respondent issued to B.B. The Board then extended Respondent's pre-existing probation, which was the result of a 2008 Order based on findings that he had prescribed controlled substances to a patient with whom he had a sexual relationship, ''[b]eginning in or around 2001 . . . through approximately 2004.'' RX 3, at 2. The Board further found that when questioned about his relationship with this patient, Respondent ''lied and denied that it existed'' until he was confronted ''with corroborating evidence.'' *Id.*

treatments, *and you also want to look for any previous aberrant behaviors.*'' *Id.* (emphasis added).

The Government then asked Dr. Owen ''what else is required?'' *Id.* Dr. Owen explained: ''So after you do an appropriate history and physical exam, you review the pertinent medical records. You may need to do consultations. You may need to do diagnostics, whether laboratory or imaging studies, and then you formulate a treatment plan based on the analysis of this information.'' *Id.* at 94–95. Asked to explain ''[w]hat's a treatment plan,'' Dr. Owen testified: ''A treatment plan is what we're going to do to move this person from wherever they are to the next place, and part of the treatment plan will be dictated by your treatment goals that you need to set up to try to get that person to the next place.'' *Id.* at 95.

Subsequently, Dr. Owen explained that ''there [are] three broad treatments in pain management: Interventional, rehabilitative, and pharmaceutical. So your treatment plan would list each of these categories if you're going to use elements of those categories in your treatment plan, and it would specifically define what your treatment plan is and how you tie it to your treatment goal.'' *Id.* at 97. Dr. Owen further testified that while treatment goals are ''tailor[ed] . . . to the individual'' and would be different depending upon a patient's age, ''you would primarily focus on functional improvements.'' *Id.* at 99–100. With respect to someone of working age, Dr. Owen explained that ''return[ing] to work'' is ''the gold standard for functionality in pain management.'' *Id.* at 100.

Subsequently, Dr. Owen testified that a treatment plan can involve more than one of these approaches and that it evolves over the course of treating the patient if the treatment goals are not being achieved. *Id.* at 98–99. However, a physician ''certainly would have [a treatment plan] on the initial visit.'' *Id.* at 99. While Dr. Owen acknowledged that a treatment plan can be ''tease[d] . . . out'' of the patient's record ''without necessarily a formal title'' if ''enough information'' is documented in the record, he then explained what content the plan should contain:

> Well, if it's interventional, you would talk about what intervention you're going to do. If it's rehabilitative, you'd talk about physical therapy, occupational therapy or psychotherapy. If it's pharmaceutical, you're going to talk about the specific pharmaceutical, its dose and the frequency that you're going to prescribe it and hopefully the indication it's being used for.

Id. at 98–99.

Asked whether the file for a patient being prescribed opioid controlled substances would contain anything else, Dr. Owen testified that you would ''have an informed consent and a pain management agreement.'' *Id.* at 99. Dr. Owen then explained that ''[a]n informed consent is telling the patient what the risks and benefits are of this proposed treatment and what alternative treatments exist.'' *Id.*

As to why a physician treating a patient for pain would seek consultation with other specialists, Dr. Owen testified that ''[t]hese are complex cases, and you can't be an expert of everything, and you may need help in narrowing your diagnosis or help in stabilizing comorbidities that are outside of your scope of practice.'' *Id.* at 100. Dr. Owen further explained that the need to consult with particular specialists ''depends on the [patient's] chief complaint and your differential diagnosis and what you're trying to achieve.'' *Id.*

Asked by the Government if ''these requirements . . . are . . . best practices,'' Dr. Owen testified that ''some of them can be best practices, but most of them are standard of care items.'' *Id.* at 100–01. Then asked if ''when you say standard of care, are they required,'' Dr. Owen explained that ''they're required based on the context of the chief complaint and . . . the facts of the situation.'' *Id.* at 101. When then asked ''are they required by law,'' Dr. Owen initially answered ''no'' before explaining that:

> Well, I'm not a lawyer. I would say that the policies and guidelines that I was sent for Oklahoma say certain things about consultations, and the one that stood out is if somebody's a complex pain patient with psychological or psychiatric comorbidities, they should get consultations with a pain management physician with expertise in these complex cases.

Id.

Dr. Owen testified that ''comorbid psychiatric conditions'' include ''depression, anxiety, maladaptive coping mechanisms, such as catastrophization, fear avoidance, disability conviction, and a sense of injustice,'' which are ''all built on a foundation of cognitive distortions.'' *Id.* at 101–02. He also testified that there are ''personality disorders and a whole host of psychiatric conditions like PTSD, OCD, bipolar, schizophrenia, [and] other scenarios like that, that make it more difficult to treat'' a pain patient. *Id.* at 102. Dr. Owen then explained that these conditions ''might magnify [a patient's] perception of pain and disability and, in doing so, [a patient's] experience of suffering is aggravated or increased.'' *Id.*

The CALJ then asked Dr. Owen if the reason it is important to refer a pain patient to a mental health expert is so that the patient's ''subjective complaint[] of pain'' can be ''properly gauged?'' *Id.* at 103. Dr. Owen answered: ''So that you can help understand the context of their pain and what might be distorting and magnifying their pain and suffering experience, because suffering is defined as your ability to cope with adversity, and everybody comes with different skill sets of how they cope with adversity.'' *Id.* at 103–04. While Dr. Owen then acknowledged that ''[p]ain is subjective,'' he further explained that ''function is objective, so that's why [a physician would] use functions as [the] primary baseline for measuring therapeutic influence.'' *Id.* at 104.

The CALJ then asked Dr. Owen if ''ask[ing] the patient about activities of daily living'' is ''one of the tools that you use?'' *Id.* Dr. Owen answered ''yes'' and added ''[t]hat's one of the things. Return to work, and you can do more global things like sitting tolerance, walking tolerance, standing tolerance, and then site-specific areas of functionality like range of motion and other physical exam measurements.'' *Id.* at 104.

Dr. Owen was then asked to describe ''the steps that a practitioner would take to determine whether a patient is truly experiencing chronic pain?'' *Id.* at 106. He replied:

> Well, there's no objective way to know if somebody [is] experiencing pain, so you take them for their word at it. But what you need to do is to make sure that you go through a process to ensure that they have exhausted all the medically reasonable treatments before you go to a high-risk, non-evidence-based treatment.

Id. at 107.

Dr. Owen further explained that ''[h]igh-risk treatments are treatments that have a potential for bad outcomes, and there's evidence-based and non-evidence-based treatments. There's low-risk, medium-risk, and high-risk treatments, and you have to have some context for how you approach the problem.'' *Id.* Dr. Owen then opined that ''chronic opioid therapy and chronic benzodiazepine therapy'' are high-risk treatments. *Id.* He also opined that chronic opioid therapy is not an evidence-based [13] treatment, noting that

[13] Dr. Owen explained that ''evidence-based studies are studies published in peer review articles that actually show positive outcomes for the treatment, and ideally these treatments are

Continued

there are ''no publications'' supporting the use of ''chronic opioid therapy'' and that ''[m]ost of the opioid articles have poor outcome[ ] metrics.'' *Id.* at 108.

Asked whether it is ''permissible to taken on a patient who's already on high-risk treatment and to continue them on high-risk treatment,'' Dr. Owen testified that while a physician ''can do that,'' the physician must ''adequately document the justification for skipping steps,'' *i.e.,* low-risk [14] and medium risk treatments, and must ''make sure that [the patient is] obtaining a clinically meaningful and objective therapeutic outcome.'' *Id.* at 109. He then explained that this means that the patient is ''having functional improvement that is truly measurable'' and that a patient's ''subjective report is problematic.'' *Id.* And later, Dr. Owen testified that even when the care of a patient is transferred from one doctor to another in the same practice, the new doctor ''need[s] to make sure that any previous documentation deficiencies or standard of care violations are rectified by doing a proper evaluation.'' *Id.* at 206.

Next, the CALJ asked Dr. Owen what, as a chronic pain specialist, he would look at to determine if a patient who was referred to him was being successfully treated with long-term opioid therapy. *Id.* at 109. Dr. Owen answered that he would ''first go to the previous medical records to see what functionality was documented before [the patient was] started on that treatment and compare it to'' the patient's current ''functionality.'' *Id.* Asked by the CALJ if ''those would be subjective notes,'' Dr. Owen explained that ''if someone is not working and now they are working, although they're subjective notes, there is an objective measure to it'' and that ''[w]henever possible, I like information from friends or family that's with the patient about [the patient's] functionality and what it was like, so there's an independent assessment.'' *Id.* at 109–10. Continuing, Dr. Owen explained that there are also ''various psychometric tests on functionality, [including the] Oswestry Disability Inventory and other things like that, that measure your function in somewhat objective terms.'' *Id.* at 110. However, Dr. Owen acknowledged that ''it all comes down to [the patient's] self-report.'' *Id.*

The CALJ then asked Dr. Owen if there are ''tests that are traditionally done in the office, such as . . . range of motion and other things . . . that have an objective sense to them?'' *Id.* Dr. Owen answered that while ''you can measure range of motion of the various joints and spine, and you can look at muscle strength and those kinds of issues . . . they don't always correlate to your ability to work and other more global functionality.'' *Id.* Dr. Owen also explained that in evaluating the patient's functionality, ''[y]ou want to look at [the] neurological assessment. You want to look at [the] straight leg raise. You want to look at spine range of motion, and you want to ask [the patient] how far can you walk; how long can you sit, and those kinds of functional assessments as well.'' *Id.* at 111.

Next, the CALJ asked Dr. Owen if on taking over a long-term opioid therapy patient, it is ''generally true that [the patient will be] continue[d] on the . . . regimen?'' *Id.* In response, Dr. Owen testified that he would not continue the regimen if the patient is ''not clinically improved from the results of this treatment.'' *Id.* Continuing, he explained that ''[a] lot of people deteriorate on chronic opioid therapy and they actually do better when they're taken off of opioids'' because they have ''opioid-induced hyperalgesia.'' *Id.* Dr. Owen then explained that this ''is a paradoxical response in which [a patient's] pain gets worse while [he/she is] on opioids, and when [the patient is] take[n] off of the opioids, [his/her] pain improves.'' *Id.*

Dr. Owen further testified that there is a difference between addiction and dependence. *Id.* at 112. After noting that ''dependency will happen to anybody over time in which an abrupt cessation of the drug will cause withdrawal symptoms,'' he explained that ''addiction has three [additional] elements: Craving the drug, continued use despite its harms, and inability to self regulate'' the use of the drug. *Id.* at 112–13. Asked how he would tell whether a patient he had ''just assumed the care of'' was dependent or addicted, Dr. Owen explained that an addicted patient ''may have self-escalation of [his/her] drugs, and . . . run out early.'' *Id.* at 113.

Dr. Owen then explained that a physician ''would use urine drug testing to see if [the patient] ha[s] all the drugs that were prescribed in [his] urine.'' *Id.* The physician would also look for ''other aberrant drug-taking behaviors'' such as ''lost medicines'' and use the prescription monitoring program to look for ''doctor-shopping . . . or other concerning activities.'' *Id.* Dr. Owen further explained that ''[y]ou would, when possible, talk to the family and see how [the patient's] behavior is'' as well as ''look for volatile behavior . . . with your staff.'' *Id.; see also id.* at 117–18 (testifying that ''problematic behaviors'' or ''red flags'' include ''[l]ost or stolen medications, self-escalation of . . . medications without permission, aberrant urine drugs tests, [PMP] behaviors that look problematic,'' and receiving reports that a patient is selling drugs).

While Dr. Owen acknowledged that the presence of suspicious behavior by a patient does not necessarily mean the patient is abusing or diverting controlled substances, it does require that the physician take ''some type of corrective action.'' *Id.* at 118. As for what type of action should be taken, Dr. Owen explained that ''[i]t depends on the context'' and that ''there's a spectrum of corrective actions . . . you might take . . . from shortening the leash and seeing the patient more frequently, with less drugs per prescription,'' to not treating with controlled substances, ''to firing the patient.'' *Id.* at 118–19.

Dr. Owen disputed the CALJ's suggestion that the use of urine drug screens is ''pretty controversial in the pain management field,'' stating that ''[i]t's a standard of care.'' *Id.* at 113. After explaining that he would set the frequency of drug testing based on a risk assessment of the patient, Dr. Owen acknowledged that the ''point of care'' enzyme-amino assay test is a ''preliminary test'' and that ''[y]ou can't use the results with any confidence.'' *Id.* at 114–15. Dr. Owen explained, however, that ''the mass spectrometry test . . . is very reliable.'' *Id.* at 115. Dr. Owen further testified that a physician would ''want to test for common illicit substances, because you don't just want to know what you're prescribing'' and would want to know if the patient is using ''non-prescribed drugs or any street drugs.'' *Id.*

Asked how a practitioner should respond to an aberrant drug test, Dr. Owen testified that ''first you need to document the presence of the aberrant . . . test. You need to document your rationale for your corrective actions. And then you explain what the corrective action is going to be.'' *Id.* at 119. Dr. Owen then reiterated his earlier testimony that ''the corrective action'' could be ''seeing the patient more frequently with less drugs''; referring the patient to see an addictionologist or a psychiatrist or psychologist ''with experience in addiction medicine'' for a consultation; having the patient see a physical medicine specialist ''to look at more functional goals''; and in severe cases, terminating treatment with

compared to some kind of either non[-] treatment or a sham treatment.'' Tr. 108.

[14] Dr. Owen testified that low-risk, evidence-based treatments include physical therapy, occupational therapy and cognitive behavioral therapy.

controlled substances. *Id.* Dr. Owen also testified that ''[t]here's no reason ever to ignore a red flag'' and that a physician has a duty to resolve the red flag before prescribing. *Id.*

Returning to the issue of what constitutes an adequate medical history, Dr. Owen testified that:

> . . . it's a history that's appropriate for whatever the chief complaint is, for example, low back pain. It includes a who, what, when, why, where, and type of elements that you would do in most any kind of a journalism course.
>
> So you'd say, how did you hurt yourself; where does it hurt; does the pain radiate down an extremity; if so, how far down; does it go past the knee; where does it end up; is there any numbness or weakness associated with it. And then you would talk about what treatments have you had or what diagnostics have you had.
>
> And you'd gather as much of that information, and you'd ask . . . how's the pain affecting you physically and psychosocially. And that's part of the Oklahoma guidelines is that you assess the person functionally, physically and psychosocially.

Id. at 115–16. Dr. Owen then testified that this information is required to be documented in the patient file, and if it is ''not in the file,'' the assumption is that ''it wasn't done.'' *Id.* at 116.

Continuing, Dr. Owen explained that:

> . . . if you don't do a proper history and a proper physical exam, if you don't look at all the pertinent previous medical records, you can't get an accurate diagnosis. And . . . you can't draw any accurate conclusions about what is the right treatment plan. And if you don't do accurate assessments, it results in potentially dangerous treatments that aren't reasonable or medically necessary.

Id. at 117.

Asked by the CALJ to explain what a pain management contract is, Dr. Owen testified that it's ''a document informing the patient what the rules of the road are.'' *Id.* at 120. Dr. Owen testified that the contract contains provisions that the patient ''won't get drugs from anybody else . . . for th[e] condition,'' the patient ''will only go to one pharmacy,'' that the patient ''will use the drugs only as directed,'' and the patient will ''submit[ ] to urine or blood drug testing.'' *Id.* Then asked by the CALJ if, in Oklahoma, the use of a pain management contract is a ''best practice'' or part of the ''standard of care,'' Dr. Owen testified that it ''is part of the [Oklahoma] guidelines of [the] standard of care.'' *Id.* Dr. Owen also testified that ''when taking on a new patient,'' a physician ''needs to have a pain management contract and informed consent.'' *Id.* at 121. Finally, when asked by the CALJ where ''there is a difference'' between the standard of care for ''a pain management specialist and someone who is treating a patient . . . for pain symptoms,'' Dr. Owen explained that ''[t]here's only one standard of care.'' *Id.* at 120–21.

On cross-examination, Dr. Owen was asked whether a prescriptive practice can ''be within . . . legitimate medical practice and still be below the standard of care?'' *Id.* at 181. In response, Dr. Owen testified that a physician ''can violate the standard of care and still have a legitimate medical practice, but [cannot] be in the standard of care and have an illegitimate medical practice.'' *Id.* When later asked ''[w]hat goes into determining if the standard of care has been met,'' Dr. Owen testified that ''the standard of care is what a reasonable and prudent physician would do in the same or similar circumstances, and a reasonable, prudent physician would go to the evidence-based literature as a foundation for how to make decisions using critical thinking skills.'' *Id.* at 183. When then asked ''if there's a community standard of care in Oklahoma,'' Dr. Owen answered that ''[t]here's no such thing as a community standard of care anymore. It's a national standard of care, and it's based on our evolving body of knowledge, and as we learn new things, the standard changes.'' *Id.* Dr. Owen then acknowledged that he did not know the Oklahoma Medicaid rules for when a patient can be referred. *Id.*

On further cross-examination, Dr. Owen was asked whether the Oklahoma Guideline which addresses the need for consultation with an expert in the management of patients who have a history of substance abuse or a comorbid psychiatric disorder is mandatory as he had previously testified. *Id.* at 185–86. Dr. Owen acknowledged that the provision states that these two conditions ''may require'' consultation. *Id.* at 186. He then added, however, that a physician ''should document why [he] deviate[d] from that recommendation.'' *Id.*

The Prescribing Events

The August 25, 2011 Prescriptions

B.B.'s patient file reflects that from the date of his first visit on or about April 24, 2009 up until August 25, 2011, B.B. obtained narcotic prescriptions from Dr. Schoelen, Respondent's partner. *See generally* GX 3; Tr. 236. While on August 25, 2011, Dr. Schoelen issued B.B. a prescription for 120 tablets of oxymorphone 10 mg, the same day, Respondent wrote B.B. prescriptions for 150 hydrocodone/acetaminophen 10/500 as well as 60 carisoprodol 350.[15] GX 3, at 24.

B.B. was not seen by either Dr. Schoelen or Respondent on this day. GX 3, at 49. However, he was required to provide a urine sample, the results of which were reported by the lab on August 29, 2011.[16] *Id.* at 99. While the lab results were expected with respect to the narcotics B.B. had previously been prescribed, the lab also detected the presence of nordiazepam, a metabolite of diazepam; oxazepam; and temazepam; none of these drugs had been prescribed to B.B.[17] *Id.*

While the Government alleged in the Order to Show Cause that the prescriptions Respondent issued on this day were ''invalid'' and violated 21 CFR 1306.04(a) and made extensive factual allegations to support this conclusion, it did not elicit any testimony from its Expert as to why. Moreover, Respondent testified that this was ''a nurse-only visit'' and that he issued the prescriptions because ''Dr. Schoelen works half [a] day'' and while Schoelen had issued one of the prescriptions, ''he had missed the fact that—or the nurses had missed and not written the other two medications for him.'' Tr. 389. The CALJ found this testimony credible. R.D. at 31.

As the Government put forward no evidence to support the conclusion that it was outside of the usual course of professional practice for Respondent to cover for his partner, nor cites to any state rule prohibiting prescribing under this circumstance, I find that the allegation is unsupported by substantial evidence.[18]

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[15] At the time carisoprodol was not controlled under the CSA. However, a proceeding to control the drug was then ongoing and the drug became federally controlled effective on January 11, 2012. *See Schedules of Controlled Substances, Placement of Carisoprodol Into Schedule IV,* 76 FR 77330 (final rule). However, during 2011, the drug was a controlled substance under Oklahoma law. *See* Okla. Stat. tit. 63, § 2–210 (2011)

[16] On June 1, 2011, B.B. had also provided a urine sample. GX 3, at 103. This test, which was reported by the lab on June 6, 2011, yielded a negative result for alprazolam, even though B.B. was then being prescribed alprazolam by another physician. *Id.* According to a PMP report, B.B. had filled alprazolam prescriptions for a 30-day supply on both May 9 and June 6, 2011. *See id.* at 25.

[17] While the lab results also noted that B.B. had tested positive for alpha-hydroxyalprazolam, a metabolite of alprazolam, and reported this result as ''not expected based on prescribed medications,'' B.B. had obtained a prescription for a 30-day supply of alprazolam on July 29, 2011 and filled the prescription the same day. GX 3, at 36.

[18] In its Exceptions, the Government argues that the CALJ erred in finding the allegation with respect to the August 25, 2011 prescriptions not proved. *See* Exceptions, at 44–47. It argues that because Respondent issued the prescriptions without seeing B.B. on that date, without having

Continued

The September 22, 2011 Visit and Prescriptions

On some date after August 25, 2011, the State Board suspended Dr. Schoelen's medical license and Respondent took over the treatment of B.B., who came for an office visit on September 22, 2011. Tr. 290; GX 3, at 48.[19] *See* GX 3, at 103; *id.* at 25. According to the progress note for the visit, B.B. had come in ''for a recheck on lumbar disc disease'' and also had a ''left abdominal hernia as well.'' *Id.* at 48. Respondent also indicated in the progress note that B.B.'s ''[p]ast medical history [was] extensively reviewed and placed in [the] chart.'' *Id.* Respondent documented that he did a physical exam, noting, *inter alia,* ''[l]umbar very painful spinal and paraspinal tenderness,'' a ''[n]egative straight leg raise,'' and ''[n]euro intact.'' *Id.* Respondent diagnosed B.B. as having ''lumbar disc disease'' and a hernia; his plan included having B.B. obtain an MRI, changing him from Lortab to Duragesic patches, and continuing Respondent on Opana and Soma (carisoprodol). *Id.* Respondent also documented that he had discussed the ''[a]ddictive, dependence, and tolerance nature of the medicines,'' the ''use of Duragesic,'' and suggested ''[n]on-medicinal pain-relieving modalities.'' *Id.*

B.B.'s file also contains a Pain Management Treatment Plan, which includes a section bearing the caption: ''Treatment Objective Evaluation.'' GX 3, at 28. This form lists several questions, with boxes for documenting by date, various findings which included: ''Has patient achieved treatment objective?''; ''Patient completed . . . updated pain scale''; ''Re-review benefits and risks of using medications''; ''Consider referral to another physician for second opinion or further treatment options''; ''Changes to Treatment Plan''; and the ''[p]hysician's initials.'' *Id.* For this visit, Respondent wrote ''yes'' as to whether B.B. had achieved the treatment objective (which was documented as ''to be able to work without pain,'' *id.* at 29), wrote the number ''3–5'' in the pain scale block, and noted ''yes'' with respect to both whether he had re-reviewed the risks and benefits of controlled substances and considered a referral to another physician.[20] *Id.* at 28.

Dr. Owen testified that because this was B.B.'s first visit with Respondent, Respondent should have ''do[ne] a proper history and physical exam and review[ed] previous treatments and everything that typically is expected for a new patient evaluation.'' Tr. 131. According to Dr. Owen, this included reviewing B.B.'s patient file which included the aberrant June 1 and August 25, 2011 drug tests. *Id.* at 132.

With respect to the August 25 drug test, Dr. Owen testified that B.B. had previously received prescriptions for alprazolam, hydrocodone, Soma (carisoprodol) and oxymorphone. *Id.* at 130. As found above, each of these drugs (or its metabolites) was detected by this test. *Id.* Dr. Owen then noted, however, that there were ''no prescriptions for the metabolites of diazepam, which is nordiazepam, or oxazepam or temazepam.'' *Id.* And he further noted that in the comment section with respect to these three drugs, the lab report stated that ''[t]hese test results were not expected based on the [prescribed] medications.'' *Id.*

Dr. Owen testified that Respondent ''completely ignored'' the aberrant drug screens and ''should have acknowledged their existence and then taken some type of corrective action.'' *Id.* at 132. Dr. Owen also testified that the patient file did not reflect that Respondent had consulted or discussed B.B. with past or current prescribers and that it did not appear that Respondent had taken any ''safeguards regarding the potential'' for diversion or abuse presented by the aberrant drug screens. *Id.* at 132–33.

Dr. Owen then testified that the patient record did not justify the prescribing of controlled substances as it did not ''establish medical necessity for this type of treatment.'' *Id.* at 133. As the basis for his conclusion, Dr. Owen explained that:

> For one, it's a superficial evaluation that doesn't adequately explain the chief complaint or what previous treatments have or have not been done. And there's no evaluation of pain or function, physical or psychosocial in the documentation. There's no evidence of a previous therapeutic benefit. There's no medical rationale for continuing with an ineffective treatment, so there's no justification to continue treatment with controlled substances.

Id. Dr. Owen also explained that ''[t]here's no proof that he's exhausted conservative care before going into these high-risk treatments'' and reiterated that ''[t]here's no evidence of a therapeutic benefit.'' *Id.* at 134. And with respect to the aberrant drug screens, Dr. Owen testified that Respondent ''could have sent this gentleman for evaluations by an addictionologist, by a psychiatrist [or psychologist] with experience in addiction medicine, and certainly

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seen him previously, and without reviewing the PMP, and because he testified that he reviewed only B.B.'s ''medical history and the last two office visit notes'' made by Dr. Schoelen, the ''issuance of the two prescriptions fell far below the standard of care and outside the usual course of practice.'' *Id.* at 46.

As noted above, the Government elicited no testimony from Dr. Owen as to whether Respondent's issuance of the prescriptions was below the standard of care or outside of the usual course of professional practice. Apparently, the Government relies on subsection 1 of the Board's chronic pain rule, *see* Okla. Admin. Code § 435:10–7–11(1), which requires that ''[a] medical history and physical examination . . . be obtained, evaluated and documented in the medical record'' in order to prescribe a controlled substance. *See* Exceptions, at 45 (arguing that ''the OK Pain Rule sets forth the standard of care for Oklahoma prescribing controlled substances . . . for the treatment of pain'').

However, in 2014, the Board promulgated an exception to the requirement that ''[t]he physician/patient relationship shall include a medically appropriate, timely-scheduled, face-to-face encounter with the patient,'' which allows ''providers covering the practice of another provider [to] approve refills of previously ordered medications if they have access to the medical file of the patient.'' Okla. Admin. Code § 435:10–7–12(1). While this rule was not in effect when Respondent issued the prescriptions, it strains credulity to suggest that providing prescriptions under the circumstances of covering for a partner violated the standard of care two years earlier when Respondent issued the prescriptions. While the Government speculates that Dr. Schoelen ''may not have issued B.B. these two prescriptions purposefully pending the results of the new UDS,'' Exceptions at 46, and argues that Respondent was required to call Dr. Schoelen as a witness to corroborate his testimony, the Government ignores that it had the burden of proof on this issue.

[19] According to a PMP report in B.B.'s patient file, he had filled a prescription for a 30-day supply of alprazolam on May 9, 2011. GX 3, at 25.

[20] In contrast to this document which contains a single box in which Respondent and Dr. Schoelen would write a number for B.B's pain (the ''Patient Completed . . . updated pain scale''), B.B.'s file contains a ''Patient Comfort Assessment Guide'' form which B.B. completed on September 2, 2009. GX 3, at 32–33. On this form, B.B. circled various words such as ''aching,'' ''throbbing,'' ''shooting'' and ''stabbing'' to describe his pain which he maintained was ''continuous'' and at its worst in the ''afternoon'' and ''evening.'' *Id.* The form also contains four instructions which directed B.B. to rate his pain on a numeric scale of 0 to 10 (with 0 being ''no pain'' and 10 being ''[p]ain as bad as you can imagine''), at its worst,'' ''its least,'' and ''on average in the last month,'' as well as ''right now.'' *Id.* at 32. In addition, the form asked ''[w]hat makes your pain better,'' ''what makes your pain worse,'' as well as ''what treatments or medicines are you receiving for your pain,'' and it further instructed the patient to numerically rate the relief he obtained (again on a 0 for ''no relief', to 10 for ''complete relief'' scale) from the treatment or medicine. *Id.*

On the form's second page, it asked ''[w]hat side effects or symptoms are you having,'' and directed B.B. to ''[c]ircle the number that best describes your experience during the past week,'' again using a 0 (''Barely Noticeable'') to 10 (''Severe Enough to Stop Medicine'') scale for 10 side effects and symptoms such as nausea, vomiting, constipation, lack of appetite, difficulty thinking and insomnia. And finally, the form directed B.B. to ''[c]ircle the one number''—on a scale of 0 for ''not [i]nterfer[ing]'' to 10 for ''[c]ompletely [i]nterfering''—which ''describes how during the past week pain has interfered with'' his ''[g]eneral [a]ctivity,'' ''[m]ood,'' ''[n]ormal work,'' ''[s]leep,'' ''[e]njoyment of [l]ife,'' ''[a]bility to [c]oncentrate,'' and ''[r]elations with [o]ther [p]eople.'' *Id.* Of note, there is no evidence that B.B. was required to complete this form at any subsequent visit.

looked at being much more careful and objective about how [he] measure[d] a therapeutic benefit with the controlled substances.'' *Id.* Dr. Owen thus opined that the prescriptions Respondent provided at this visit were not issued in the usual course of professional practice and lacked a legitimate medical purpose. *Id.* at 133.

On cross-examination, Dr. Owen was asked if he considered Respondent's ordering of an MRI at this visit to be ''a safeguard.'' *Id.* at 188. Dr. Owen initially answered ''no,'' before explaining that ''[i]t depends [on] if you clinically need the MRI, and you only need the MRI if you're looking for something that has potentially a surgically correctable lesion,'' and that absent ''a clinical finding'' that suggests ''an MRI is needed to confirm a lesion that's surgically reversible . . . you don't have medical necessity to get an MRI.'' *Id.* Dr. Owen further explained that ''MRIs have high false positive rates'' and that ''[a]bnormalities are commonly found in asymptomatic people.'' *Id.* On questioning by the CALJ as to whether when a patient complains of ''a high subjective level of pain,'' an MRI could ''at least confirm [if] there was some objective basis for it,'' Dr. Owen explained that ''without a neurological finding,'' it is ''rarely . . . valuable to get an MRI.'' *Id.* at 189. He further explained that MRIs show ''abnormalities that are nonspecific'' leading to ''overtreatment,'' and thus a physician ''need[s] something more objective from a physical exam finding to get an MRI.'' *Id.*

In response to a further question by the CALJ which posited whether an MRI would provide an objective basis such as ''foraminal narrowing'' or ''spondylosis'' for concluding that a patient ''may be having a spine issue'' and is not ''making it up,'' Dr. Owen explained that ''foraminal stenosis or foraminal narrowing are common in asymptomatic people.'' *Id.* at 190. Dr. Owen then explained that ''[t]he only reason it would be important is if you have a radiculopathy you've identified on clinical exam . . . and that would be pain going down the leg in a dermatome distribution, typically below the knee.'' *Id.* Continuing, Dr. Owen explained that there may be ''numbness'' and there may be ''weakness associated with the isolated nerve that's being entrapped, and you would have a positive straight leg raise.'' *Id.*

Dr. Owen further noted that ''almost all the exams'' on B.B. ''said it was negative straight leg raise'' and that this is ''the most sensitive physical finding for low back pain.'' *Id.* Dr. Owen then explained that ''a sensitive test means that if you don't have a positive finding you don't have that diagnosis.'' *Id.* Moreover, Dr. Owen testified that even if a patient reported symptoms consistent with radiculopathy, ''you'd want physical exam findings, with the most important being the straight leg raise, according to the North American Spine Society.'' *Id.* at 191. Dr. Owen further explained that ''if you had a negative straight leg raise, then you don't have radiculopathy, and if you don't have radiculopathy . . . you really don't need to get an MRI, because it's just going to lead to finding things that send you on a garden path of overinterpreting the diagnosis.'' *Id.*

Regarding B.B.'s September 22, 2011 visit and the prescriptions he issued, Respondent testified that the first thing he would do when entered the exam room is look at the Pain Management Treatment Plan (GX 3, at 28) after which he would ''look[ ] at his previous notes.'' [21] Tr. 286. According to Respondent, he would ask the patient if he had ''achieved [his] objective in the pain medicine contract'' and ''what [the patient's] pain level is on medicine'' and use ''a scale of 1 to 10.'' *Id.* Continuing, Respondent testified that ''then we [would] talk about what their medicines are and what utilization that we would use, what the risks are using the medicines . . . what our plans are, what treatment, what goal we're going to go for, and what we might need to change or initiate in the treatment, and then decide whether [to do] a urine drug screen.'' *Id.* at 286–87. Respondent then testified that B.B. ''basically said that he had achieved his pain goal and that he was only a 3 to 5 out of 10, that he preferred that we not make any changes or any type of referral at that time, and I did a urine drug screen.'' *Id.* at 287. There is, however, no evidence that Respondent did a urine drug screen at this visit. *See* GX 3.

Respondent was then asked by his counsel if he looked back at the August 25 drug screen. Tr. 287. Respondent testified that he ''would not'' have discussed the results with B.B. because ''[b]asically he was on all the medicines he was prescribed, and according to [the lab], if you're on one benzodiazepine, all the other benzodiazepines can appear positive within the drug screen.'' *Id.* Respondent then testified that B.B. was ''on Xanax [alprazolam] by another provider, and he was also on Ambien.'' *Id.* Asked how he knew that B.B. was on both drugs, Respondent testified that B.B. had listed the alprazolam on the intake form he completed at his first visit and while the Ambien was not listed ''on his past medical sheet, [it] was on the PMP.'' *Id.* Respondent then added that the Ambien was prescribed by B.B.'s psychiatrist. *Id.* at 289. He further maintained that when the practice ''started doing pain management, we were getting multiple episodes where patients were denying that they had taken other benzodiazepines,'' and when they contacted the lab, the lab told them that Xanax can cross-react and cause a positive result on the mass spectrometry for other benzodiazepines. *Id.* Thus, Respondent maintained that he did not believe this to be an aberrant drug screen. *Id.*

Respondent further testified that although he took over the care of B.B., he did not simply continue the same treatment that Dr. Schoelen provided. *Id.* at 290. Rather, he testified that based on his ''education and . . . experience, especially with Lortab . . . I found it too addicting to keep people on short-acting pain medicines.'' *Id.* at 291. Respondent told B.B. ''that there would have to be . . . a change in his treatment, and that I would have to use a long-acting pain medicine and a short-acting only for breakthrough'' pain. *Id.* While Respondent continued B.B. on carisoprodol and Opana, he took B.B. off of Lortab ''and gave him a two-week trial of the Duragesic patch.'' *Id.*

Respondent also maintained that B.B.'s ''reported pain and his objective'' were consistent with the findings on physical examination. *Id.* at 292. He also testified that he had discussed the use of Duragesic and that it, as well as morphine and Opana ER, were the ''only long-acting pain medications that'' the Oklahoma Medicaid program ''would cover'' and that Medicaid would only pay for three prescriptions a month.[22] *Id.* Respondent further

[21] However, in discussing the August 25 prescriptions, Respondent testified that ''[a]nytime I had to do anything with the chart of Dr. Schoelen's or pain management or anyone that I hadn't seen before, I would look at their last two office notes, and I'd look at their past medical history sheet on the front that's filled out by the physician . . . and then I would look at the PMP.'' Tr. 281.

Asked with respect to the August 25 prescriptions if he ''looked back at the previous drug tests,'' Respondent answered: ''I don't recall, but I doubt I did. . . . I wouldn't expect myself to.'' *Id.* at 283.

[22] It is unclear, however, whether B.B. was on Medicaid or Medicare or both at the time of the prescription. *See,* GX 3, at 7 (copy of B.B.'s Medicare card and Sooner Care Medical ID card); *id.* at 8–9 (Medical Home Agreement for SoonerCare); *id.* at 10–13 (Advance Beneficiary Notices dated during 2011 through 2012 advising B.B. that ''Medicare probably will not pay for'' various items or services and explaining appeal rights if Medicare did not pay); *id.* at 14 (referral form for SoonerCare dated 10–14–09). *See also* Tr. at 192–93. Moreover, Respondent offered no

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maintained that he and B.B. had discussed non-medicinal pain-relieving modalities so that B.B. knew that he believed in them and that he then ordered the MRI. *Id.* at 293.

As for why he ordered the MRI, Respondent testified that it was the ''[s]tandard of care in Oklahoma,'' and that while ''[h]e had an X-ray done in 2009 that was consistent with his finding . . . [i]f you treat chronic pain . . . patients and [are] audited by the Board or your insurance company [and] you don't have an objective finding in the chart, such as X-rays and MRIs, you're quite . . . the outlier.'' [23] *Id.* Respondent added that he ''wanted to make sure that [B.B.] was consistent with . . . [w]hat he was being treated for and what his exam [sic] and the fact that he was on a Schedule II narcotic.'' *Id.* at 293. Respondent then explained that while an MRI might give a false positive, ''[if] the pain is consistent with it, it's just one more piece of evidence that gives you a reason to believe that the patient's legitimate and that you're legitimately treating his condition.'' *Id.* at 294. Respondent also testified that an MRI provides a baseline should his exam change at a late date. *Id.*

The October 6, 2011 Visit

On October 6, 2011, B.B. again saw Respondent. In the visit note, Respondent wrote: ''Patient has been on the DURAGESIC 50 mcg and the OPANA. Now, he would like to try the Morphine. He is slowly trying to figure out the right regimen for him.'' GX 3, at 47. Respondent again noted in the chart that ''[p]ast medical history extensively reviewed and placed in chart.'' *Id.* With respect to the physical exam, Respondent noted: ''[l]ow back paraspinal tenderness,'' ''[n]egative straight leg raise,'' and ''[n]euro intact.'' *Id.* Respondent also found that B.B. ''has a left abdominal wall hernia.'' *Id.* Respondent listed his diagnoses as ''[l]umbar disc disease'' and ''anxiety.'' [24] *Id.*

At the visit, Respondent prescribed 30 tablets of Morphine Sulfate ER15 mg B.I.D. (one tablet twice per day), for a 15-day supply. GX 5, at 25. Respondent also recommended that B.B. ''[w]ear a corset if at all possible'' for his hernia. GX 3, at 47.

Regarding the prescription, Dr. Owen testified (in the words of Government counsel) that it is not ''normal practice . . . for patients to dictate the controlled substances they're prescribed.'' Tr. 135. Asked ''why not,'' he explained that a physician must ''safeguard the patient against addiction, and you need to do things that are medically necessary, not what patients want.'' *Id.* at 135–36. Dr. Owen further testified that ''it's a yellow flag for a patient to ask for a drug specifically,'' but not necessarily ''a red flag'' as ''it could mean [the patient] had a previous experience with the drug and either found it helpful, or they've had previous experience from the drug from an illicit means.'' *Id.* However, because Respondent did not document that he addressed ''B.B.'s previous history with morphine'' B.B.'s request was ''elevate[d] to a red flag.'' *Id.* at 136.

Asked what steps Respondent should have taken, Dr. Owen testified that ''just the fact that the aberrant urine drug tests were there means that you should get some consultations, because . . . this is a complex issue, and there's behaviors going on that you can't quite understand without a more thorough assessment by mental health providers or addictionologists.'' *Id.* at 136–37. According to Dr. Owen, this was so even if B.B. had not asked for morphine. *Id.* at 137.

Here again, Dr. Owen testified that the medical record did not justify the prescribing of controlled substances. *Id.* He explained that:

> This is a superficial evaluation that does not properly address the chief complaint of low back pain or establish medical necessity for treating with controlled substances. There's no assessment of pain, physical or psychosocial function, and therefore, there's no medical necessity to continue treatment with controlled substances, and if you don't have medical necessity, you don't have a legitimate purpose to treat.

Id. And again, Dr. Owen opined that the prescriptions ''were not'' issued in the usual course of professional practice and ''were not'' for a legitimate medical purpose. *Id.* at 137–38.

Regarding this visit, Respondent testified that B.B. had ''report[ed] that his objectives were only fair'' and that ''[h]is pain level had gone up to a 6 out of 10 on the Duragesic.'' *Id.* at 295. Respondent further testified that ''[w]e again went over what the rules were and what the Medicaid and the Duragesic and what the risk benefits were. We talked about whether we needed to make a referral at that point or make any other changes.'' *Id.* Respondent also testified that B.B. ''had a full exam'' but that ''[t]he MRI was not back yet.'' *Id.*

As for the statement in the progress note that B.B. ''would like to try the Morphine,'' GX 3, at 47, Respondent testified that B.B. ''did not believe the Duragesic was sufficient and that he wanted to try one of the other medicines that was on the formulary.'' Tr. 296. Respondent testified that he did not believe this to be a ''red flag'' in B.B.'s case because he ''had made it very clear to [B.B.] what our choices were'' under the Medicaid formulary and ''the majority of patients are very concerned [because] Duragesic and morphine are used for dying cancer patients, and why are we putting them on medications for dying.'' *Id.* Respondent then testified that he was ''sure I told [B.B. that] Duragesic, morphine and Opana ER'' were his options. *Id.*

The CALJ, observing that ''saying the patient requested morphine . . . is kind of a remarkable note,'' asked Respondent how his conversation with B.B. went. *Id.* at 298. Respondent answered: ''Probably that I didn't like the Duragesic and you suggested that morphine was an option. Can we try the morphine this time. Probably something like that.'' *Id.* at 299. Respondent added that B.B. ''was not pleased . . . that we changed the Lortab and the Opana, so the fact that I made him do the Duragesic, he was not happy.'' *Id.* at 300. Respondent further noted that he ''did his exam'' and ''[i]t was still consistent that he did have left abdominal wall weakness.'' *Id.* Respondent explained that ''[h]is diagnosis was lumbar disc disease, anxiety, and a questionable upper respiratory infection'' and that he ''placed [B.B.] on antibiotics.'' *Id.* As for his abdominal wall pain, Respondent discussed with B.B. ''wearing a corset if at all possible'' because he did not ''want to confuse his . . . abdominal pain[] with his level of pain because of my change in his pain regimen.'' *Id.* Respondent further explained that B.B. ''would follow up . . . in two weeks'' and was given only ''a two week supply of his new Schedule II medicine.'' *Id.* According to Respondent, ''anytime [he] made a large change in [a patient's] medications, [he] would only give a two-week'' supply in the event the patient was ''allergic to it,'' was ''going to abuse it,'' or ''got no pain relief whatsoever.'' *Id.* at 302.

Respondent also testified that he had given B.B. a shot of Decadron, a steroid, which ''sometimes'' provides patients in ''severe pain'' with ''significant relief'' and is ''a great indicator that [the patient's] pain was more inflammatory than other nature.'' *Id.* at 301.

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testimony as to whether Medicare used the same formulary as the Oklahoma Medicaid program.

[23] A progress note for B.B.'s September 2, 2009 visit stated that an x-ray was obtained and confirmed the existence of lumbar thoracic scoliosis but that the disc spaces appear to be within normal limits. GX3, at 59. The Government did not, however, ask its Expert to address the significance of these findings.

[24] Respondent found, however, that B.B. was ''[a]lert and oriented and in no apparent distress.'' GX 3, at 47.

The October 20, 2011 Visit

B.B. again saw Respondent on October 20, 2011. GX 3, at 46. According to the progress note, B.B. reported that ''his stress [was] up,'' that he had ''los[t] his father, and ''he [was] having a lot of grief.'' [25] *Id.* Respondent again noted that B.B.'s ''[p]ast medical history [was] extensively reviewed and placed in chart.'' *Id.*

As for the physical exam, Respondent noted that B.B. had ''[l]ow back paraspinal and spinal tenderness'' and a ''[n]egative straight leg raise, but [that] lying down and sitting up cause him a lot of pain.'' *Id.* He also noted ''[n]euro intact.'' *Id.* Respondent again diagnosed B.B. with ''[l]umbar disc disease'' and added a further diagnosis of ''[a]cute grief.'' *Id.* Respondent documented that he discussed the ''[a]ddictive, dependence, and tolerance nature of the medicines as well as alternatives,'' that he suggested ''[n]on-medicinal pain-relieving modalities,'' and that the follow-up would be either ''p.r.n.'' (as needed) or ''three months per his pain contract.'' *Id.* Respondent also issued B.B. new prescriptions for 120 Opana 10 (one tablet every 6 hours P.R.N. for breakthrough pain) and 90 Morphine Sulfate ER 15, increasing the dosing of the latter drug to one tablet in the morning and two tablets in the evening. *Id.; see also* GX 5, at 19, 22.

With respect to the statement in the progress note that B.B. was having a lot of stress and grief, Dr. Owen testified that this ''magnifies the perception of pain and disability'' and that because there were previous ''aberrant behaviors going on and now . . . another stressor in [B.B.'s] life,'' this ''increase[d] the risk'' that B.B. would ''use [the] drugs to chemically cope.'' Tr. 139. Dr. Owen then explained that Respondent should have ''sought psychological counseling for'' B.B. *Id.* Based on there being ''no documentation of [Respondent] taking additional steps,'' Dr. Owen concluded that he ''did not'' do that. *Id.* at 140.

Dr. Owen also testified that Respondent's notation that ''[n]onmedicinal pain-relieving modalities suggested'' lacked sufficient detail before rhetorically asking: ''What does that mean, nonmedicinal modalities suggested?'' *Id.* at 209–10. Continuing, Dr. Owen explained:

> First, you don't suggest treatment. Your job as a physician is to advise the patient of what good medicine is, and good medicine would be if you haven't done nonmedicinal pain-relieving modalities, we need a back-up, wean you off these controlled substances and try these other treatments first.

Id. at 210. Then asked what the purpose is ''of providing that level of detail in a patient file,'' Dr. Owen answered:

> Well, the purpose of documentation is for continuity of care. Not only continuity of care for this same provider from visit to visit but continuity of care should somebody else assume the care later on down the road or should you need to get a consultation, that the consultant can read your notes and understand what was happening with this patient at this point in time.

Id.

Regarding this visit, the CALJ asked Dr. Owen if Respondent's notation that ''[n]egative straight leg raise, but lying down and sitting up causes him a lot of pain'' had ''any significance?'' *Id.* Dr. Owen replied: ''[I]t doesn't—it's not objective [in a] neurological kind of sense, but it definitely contributes to the idea that it's not therapeutic on his controlled substances, because he's having a lot of pain, lying down and sitting.'' *Id.* When then asked by the CALJ, ''[h]ow about the negative straight leg raise part of it?'' Dr. Owen answered: ''[t]hat means he cannot have a radiculopathy. There's not likely anything surgically going on.'' *Id.* at 211.

Dr. Owen again testified that the medical record did not support the prescribing of controlled substances. *Id.* at 140. He testified that: ''[a]s previously discussed, there's an inadequate evaluation going on. There's a lack of medical necessity to continue treatment with controlled substances since there's no therapeutic benefit. And if you don't have medical necessity, you can't have a legitimate medical purpose for using controlled substances.'' *Id.*

Respondent testified that the ''most remarkable'' thing in the October 20 progress note was that B.B.'s blood pressure had gone up and that B.B. was also ''wanting to know about his MRI report.'' [26] Tr. 305. Respondent then testified as to the various entries in the October 20 note including B.B.'s report of having ''lost his father'' and ''having a lot of grief.'' *Id.* According to Respondent, B.B.'s ''exam was still exactly like before, with low back paraspinal and spinal tenderness, but he still had the negative straight leg raises. But laying down and sitting up still caused him a lot of pain.'' *Id.*

Continuing, Respondent testified that he diagnosed B.B. with acute grief and lumbar disc disease and that he increased his Morphine to two pills or 30 milligrams in the evening while keeping his Opana for breakthrough pain. *Id.* He also testified that he warned B.B. about ''the addictive, dependence and tolerance natures'' of the medications and ''suggested that he continue using his non-pain [sic] relieving modalities.'' *Id.* Respondent did not, however, offer any further explanation as to what those modalities involved. Respondent then testified that he determined the follow-up would be in ''three months'' as he ''felt like [B.B.] could really go into the three-month'' schedule for being seen by him. *Id.* at 305–06. However, at this visit, Respondent did not document whether B.B. was achieving his treatment objective or that he had obtained a numeric rating from B.B. as to his pain. *See* GX 3, at 28.

On October 21, 2011, the day after this visit, B.B. had an MRI done of his lumbar spine. *Id.* at 19. The Radiologist reported his impression as follows: ''Degenerative changes of the lower lumbar spine as above. Most affected level is at L5–S1 where a left paracentral disc protrusion contacts the descending S1 nerve root in the lateral recess.'' [27] *Id.* at 20.

Regarding the MRI, Dr. Owen tested that it ''did not show any specific problems that would be attributable for this kind of pain complaint[], nor was it significant to cause the perceived disability that this 26-year-old gentleman considers himself'' to have. Tr. 207. And as he earlier testified in response to the CALJ's question as to whether an MRI would provide an objective basis such as ''foraminal narrowing'' or ''spondylosis'' for concluding that a patient ''may be having a spine issue'' and not ''making it up,'' Dr. Owen explained that ''foraminal stenosis or foraminal narrowing are common in asymptomatic people.'' *Id.* at 190. Dr. Owen then explained that ''[t]he only reason it would be important is if you have a radiculopathy you've identified on clinical exam . . . and that would be pain going down the leg in a dermatome distribution, typically below the knee.'' *Id.* Continuing, Dr. Owen explained that

[25] Yet Respondent also noted that B.B. was ''[a]lert and oriented and in no apparent distress.'' GX 3, at 46.

[26] However, while the visit includes the handwritten notation ''Question about MRI,'' GX 3, at 46, B.B. did not undergo the MRI until the next day. *See id.* at 19.

[27] Other findings included that L1–L2, L2–L3, and L3–L4 were all normal, as well as that the alignment of his vertebrae was normal. GX 3, at 19. At L4–L5, the MRI found a ''[s]mall left paracentral disc protrusion with no significant spinal canal with mild left neural foraminal and no significant right neural foraminal stenosis.'' *Id.* At L5–S1, the MRI found a ''[s]mall left paracentral disc protrusion measuring 8 mm in [the] AP dimension results in moderate subarticular recess narrowing, with contact of the descending S1 nerve root. There is mild left neural foraminal stenosis with no significant right neural foraminal stenosis.'' *Id.*

there may be ''numbness'' and there may be ''weakness associated with the isolated nerve that's being entrapped, and you would have a positive straight leg raise.'' *Id.*

The November 18, 2011 and December 15, 2011 Prescriptions

On November 18, 2011, Respondent wrote new prescriptions with the same dosing instructions for 90 Morphine Sulfate ER 15 mg and 120 Opana 10 mg; each of these was for a 30-day supply. GX 5, at 17, 21; GX 3, at 23. B.B. filled the prescriptions the same day. While B.B.'s file contains photocopies of the prescriptions, it contains no documentation of a visit with either Respondent or a nurse on this date. *See generally* GX 3; Tr. 142.

Likewise, on December 15, 2011, Respondent wrote new prescriptions with the same dosing instructions for 90 Morphine Sulfate ER 15 mg and 120 Opana 10 mg, each of these being for a 30-day supply. GX 3, at 67, 90. Respondent filled these prescriptions the same day. *Id.* at 23. Here again, there is no documentation of a visit with either Respondent or a nurse on this date. *See generally* GX 3; Tr. 142.

Dr. Owen testified that ''[e]specially in the context of the previous aberrant urine drug testing and the lack of any clear medical necessity or therapeutic benefit,'' Respondent ''should have'' seen B.B. in his office prior to prescribing the drugs on both dates. Tr. 142. Dr. Owen further testified that notwithstanding that at the October 20 visit, B.B. had reported that ''his stress is up'' and that ''he [was] having a lot of grief,'' there is no notation in B.B.'s file as to how B.B. was dealing with these issues. *Id.* Dr. Owen also noted that there was no notation in the file that Respondent had discussed the results of the aberrant drugs tests with B.B. *Id.* at 143. Dr. Owen then testified that Respondent had ''never'' established ''a medical necessity . . . to continue these treatments'' and that this would require an in-office visit. *Id.*

After explaining that the aberrant drugs tests and mention of B.B.'s life stressors supported the need for psychological counselling and consultations with a psychologist or addictionologist, Dr. Owen was asked what risk was created by prescribing these drugs to B.B. without requiring an office visit. *Id.* Dr. Owen testified that ''[t]he risk is that he continues to self-escalate these medications, and [is] either chemically coping or becomes—or is addicted to it.'' *Id.* Dr. Owen then opined that Respondent had never established the ''medical necessity'' of the prescriptions he issued to B.B. on these two dates, that the prescriptions lacked a legitimate medical purpose, and that Respondent acted outside of the usual course of professional practice in issuing them. *Id.* at 144.

On cross-examination, Dr. Owen was asked whether he was aware that under DEA's regulation which allows a physician to ''issue multiple prescriptions authorizing the patient to receive . . . up to a 90-day supply of a schedule II controlled substance, provided [various] conditions are met,'' ''it was okay . . . to only see a patient once . . . every 90 days?'' *Id.* at 195–96; *see also* 21 CFR 1306.12(b). While Dr. Owen answered ''yes,'' he added that a physician must have ''established medical necessity and legitimate therapeutic benefit from previous documentation and [that] a patient doesn't have a high risk of abuse.'' Tr. 196. Dr. Owen then re-iterated that B.B. ''already had multiple aberrant urine drug tests before those prescriptions were issued.'' *Id.*

Regarding these prescriptions, Respondent testified that he did not understand that he had to see B.B. ''every 30 days'' and that ''[w]e saw him every 90 days.'' *Id.* at 307. Respondent further testified that ''[a]t the time there was debate within the state as to whether'' patients ''could be seen'' even ''every four months'' and ''we had chosen every three months, so we never gave more than two refills on a II or above.'' *Id.* Respondent then explained that the patients ''would call one to two days ahead, a lot of times to the pharmacy, and the pharmacist faxes the request.'' *Id.* at 307–08. Continuing, Respondent testified that ''[a] PMP would be pulled, and then the chart would be pulled. And then we would write a prescription for the person and leave it up front for them to pick up and sign for.'' *Id.* at 308. Respondent further testified that the November 18 prescriptions were issued 29 days after the previous prescriptions. *Id.* at 311. Respondent did not, however, address Dr. Owen's criticism that B.B. presented a high risk of escalating the use of the controlled substances and should have been seen prior to prescribing on each of these dates. *See id.* at 306–13.

The January 19, 2012 Visit and Prescriptions

On January 19, 2012, B.B. again saw Respondent, who reported that he had gone to the emergency room ''two weeks ago with right leg swelling'' but that ''[h]is ultrasound was negative.'' GX 3, at 45. B.B. complained of ''some calf pain'' and that ''[h]e still feels very tight.'' *Id.* Respondent also noted that B.B. ''goes to a psychiatrist'' and ''reports severe lumbar disc disease''; he also noted that B.B. reported that ''he ha[d] been exposed to someone with HPV'' and ''would like an exam.'' *Id.* Respondent further noted that B.B.'s ''[p]ast medical history [was] extensively reviewed'' and ''placed in chart.'' *Id.*

According to Respondent's exam notes, B.B. was ''[a]lert and oriented and in no apparent distress.'' *Id.* While other portions of the exam were normal, Respondent again documented that B.B. had ''[l]ow back paraspinal tenderness,'' a ''[n]egative straight leg raise,'' and ''[n]euro intact.'' *Id.* He also documented that B.B. ''has very tight right calf.'' *Id.* However, no mention was made of B.B.'s hernia which had been noted at previous visits. *Id.*

Respondent diagnosed B.B. with ''lumbar disc disease,'' ''exposure to infectious disease,'' and ''[r]ight calf pain.'' *Id.* He further documented that he discussed the ''[a]ddictive dependence, and tolerance nature of the medicines as well as alternatives,'' that he suggested ''[n]on-medicinal pain-relieving modalities,'' and that the ''[f]ollowup will be [in] three months.'' *Id.* Respondent then issued B.B. new prescriptions for Morphine Sulfate ER 15 mg and Opana 10 mg with the same dosing instructions, thus providing a 30-day supply for each drug if taken as directed. *Id.*

At this visit, B.B. was required to provide a urine drug screen. While the results were not reported until January 31, 2012, the lab reported that morphine was ''not detected'' and that this result was ''not expected with prescribed medications.'' GX 3, at 97. Moreover, while the lab detected the presence of alpha-hydroxyalprazolam, a metabolite of alprazolam, the lab also detected the presence of nordiazepam, the metabolite of diazepam, as well as the presence of oxazepam, and temazepam. *Id.* With respect to the presence of the latter three drugs, the lab reported that these three results were ''not expected with prescribed medications.'' *Id.* Of further note, the lab report bears the handwritten but undated notation: ''Pt counseled to only take what is prescribed[.]'' *Id.*

Dr. Owen testified that while ''oxazepam can be a metabolite of several other benzodiazepines,'' this was an aberrant drug test because non-prescribed drugs were detected and prescribed drugs were not detected. Tr. 150–51. As for the drugs that were detected but were not prescribed, Dr. Owen testified that B.B. was either ''getting [them] from the illicit . . . market or from a friend.'' *Id.* at 151. As for the morphine, which was prescribed

but not detected, Dr. Owen explained that ''[e]ither [B.B. was] selling it on the street or he self-escalated and ran out of his supply.'' *Id.*

Regarding this visit, Dr. Owen testified that when a patient reports having gone to the emergency room, he would get the record to find out both ''what the problem was,'' as well as if ''any additional medication [was] prescribed.'' Tr. 147. However, the patient file does not contain a note from the emergency room. *Id.; see also* GX 3. Moreover, after observing that the visit note contains no mention that Respondent addressed either of the two prior urine screens during this visit, Dr. Owen again testified that Respondent had failed to establish medical necessity for the prescriptions ''by doing a proper history and physical exam, by defining a therapeutic benefit, by explaining what previous treatments have or have not worked . . . and . . . addressing the previous aberrant urine drug tests.'' *Id.* at 148. Thus, Dr. Owen opined that Respondent acted outside of the usual course of professional practice in issuing the prescriptions and that the prescriptions lacked a legitimate medical purpose. *Id.*

Regarding the prescriptions, Respondent testified that B.B. wanted refills and then testified as to what he had documented in the note. *Id.* at 313. Asked by his counsel if B.B. had ''ask[ed] for anything different or call[ed] for additional drugs when he went to the ER,'' Respondent testified that ''[t]here was nothing on his PMP that revealed they prescribed anything,'' a fact confirmed by the PMP. *Id.* at 314; GX 3, at 23.

Observing that the visit note ''almost seems as if [B.B.] would be a person that's not in pain,'' the CALJ asked: ''doesn't it seem like an unremarkable set of . . . notes for such a high amount of painkillers?'' Tr. 315. Respondent answered: ''He just continued to have the same pain that he had before, so I didn't go into details on it.'' *Id.* The CALJ then asked: ''doesn't it seem like kind of an unremarkable set of notes for somebody that's on a lot of heavy medications?'' *Id.* Respondent answered that he ''agree[d]'' and added that ''I can only conjecture at this point as to what was going on, but I imagine I was more concerned about the fact he had went to the emergency room and making sure he didn't get other medicine'' and ''less concentrated on his chronic pain.'' *Id.* at 316. The CALJ then commented that ''the notes do seem very benign'' and asked ''if that seemed normal to'' him? *Id.* at 316–17. Respondent answered that ''[i]t stands out that I didn't make more.'' *Id.* at 317. Respondent then maintained that he ''was seeing 40 to 45 patients a day and dictating that night and the next morning, and so I definitely could have done a better job.'' *Id.* Continuing, Respondent testified that he thought that at this visit, B.B. ''wasn't requesting any more or any change in his pain medicines'' and ''wasn't reporting anything except his calf pain and his new conditions.'' *Id.*

At this point, Respondent's attorney suggested that he had noted ''his lumbar disc disease and ''low back paraspinal tenderness'' in the visit note, prompting Respondent to state: ''[t]hat's correct. And he still had the negative straight leg raise.'' *Id.* at 317–18. Respondent then conceded that his finding of a negative straight leg raise was an indicator that B.B.'s back issues were not causing radiculopathy in his legs. *Id.* at 318. However, Respondent maintained that ''a negative straight leg raise doesn't mean they [sic] don't have significant pain when you raise their [sic] leg,'' and that ''if you raise their [sic] foot when they're [sic] laying in a supine, they [sic] flinch back.'' *Id.* Respondent did not, however, document this in the progress note for this visit, nor did he document as he had at the last visit that ''lying down and sitting up cause [a] lot of pain.'' *Compare* GX 3, at 46, with *id.* at 45.

Moreover, when the CALJ asked if ''[t]his note was more saying . . . that he's still maintaining an absence of at least an objective sign of radiculopathy,'' Respondent answered: ''[o]f radiculopathy, but not necessarily paraspinal or muscular-skeletal pain.'' Tr. at 318–19. Upon further questioning by the CALJ as to his reason for noting the negative straight leg raise, Respondent agreed with the CALJ's suggestion that the reason for the note was to ''more or less show that things [weren't] getting worse'' and then added that ''there was no change.'' *Id.* at 319.

Yet, at this visit, Respondent neither documented that B.B. had achieved his treatment objective nor indicated if he had completed an update pain scale on the Treatment Plan form. *See* GX 3, at 28. Respondent did not document if B.B. was achieving his treatment objective and had completed an updated pain scale until his January 27, 2015 visit, when Respondent wrote ''fair'' in the block for ''Has patient achieved treatment objective?'' and either the number 3 or 7 in the block for ''Patient Completed Updated Pain Scale'' on the Treatment Plan form.[28] *Id.* On the same date, Respondent also wrote ''no'' in the block for whether he considered referring B.B. for a second opinion or further treatment options. *Id.*

According to the progress note for the January 27 visit, B.B. reported that he was ''very anxious'' about the price of the vaccine for HPV. GX 3, at 44. Respondent also documented that B.B.'s ''[p]ast medical history [was] extensively reviewed and placed in chart and includes severe thoracic and lumbar pain.'' *Id.* And in the physical exam section of the note, Respondent noted ''low back paraspinal and spinal tenderness'' and ''[q]uestionable straight leg raise.'' *Id.* He also noted ''[n]euro intact.'' *Id.* Respondent did not, however, prescribe any controlled substances on this date. *See id.; see also id.* at 22–23 (PMP Report).

The CALJ also asked Respondent whether he thought the Jan. 27 visit note looked ''very benign'' if he was ''really evaluating'' the ''efficacy of the pain [medication] regimen'' as it only referred to B.B.'s ''past history'' of thoracic and lumbar pain. *Id.* at 323. Respondent answered that even if he ''was seeing someone for something other than their [sic] pain management and not writing prescriptions that day,'' he would ''acknowledge the fact that that was still underlying'' and ''reflect[] [that] in the note,'' so that it did not ''appear[] that he has no pain in between'' the visits. *Id.* at 324.

The CALJ, explaining that the progress note did not ''seem to discuss at all the underlying basis for the pain [medication] regimen'' or the ''activities of daily living or . . . function,'' asked Respondent if ''those [are] things that you would ordinarily include in there?'' *Id.* at 324. Respondent answered that ''[i]n the individual's subjective—or the SOAP notes, a lot of times those would be neglected. With time constraints, I'm not necessarily efficient. That's not ideal I guess is what I'd say.'' *Id.* Continuing, Respondent testified: ''But this patient had been disabled on Social Security and determined previously to have chronic pain and . . . objective data confirmed that. He was not doing anything to set off alarms with his PMP, doctor-shopping or changing his medications. He was stable on his medicines at that point.'' *Id.* Respondent then maintained that B.B. ''was one of our low-flyers'' compared to other patients and because ''[h]e wasn't increasing his pain med [and] not asking for increased pain medicines . . . I guess [he] got less individualized SOAP notes.'' *Id.* at 325.

Observing that the visit notes ''don't tend to deal with activities of daily living or anything where you were

[28] Indeed, the writing bears a strong semblance to the number 3 as written by Respondent in listing his registration number (BP2423440) on various prescriptions. *Compare* GX 3, at 28, *with* GX 5, at 23; *see also* GX 1, at 1.

measuring how well the treatment objectives are being attained,'' the CALJ asked Respondent how he evaluated ''how well you're doing in treating the patient with . . . pain medications?'' *Id.* at 325–26. Respondent testified that:

> [t]he notes could be much more well written. Much more went on in the office than what's written. And it's been pointed out here that if it's not written it didn't occur. That doesn't mean it didn't occur. It means I can't prove it. But I definitely knew what was going on in his life from each visit, and I just failed to dictate that.

Id. at 326.

Subsequently, the CALJ asked Respondent how he knew ''how the meds were doing?'' *Id.* at 327. Respondent answered: ''Pure subjective, and if they were needing more or less pain meds. That's all I —.'' *Id.*

The CALJ then asked Respondent if he was not asking B.B. ''questions about what activities he's doing or what's better or worse or what's causing him pain, then aren't you just depending on his subjective desire for more or less pain medicine?'' *Id.* Respondent replied:

> Well, I was talking to him about those things and what all he did in a day, and he was not able to work. He . . . didn't have a vehicle, I don't believe. I think that was a major issue for how he got his prescriptions or not. And so he basically was stuck in the house all day, trying to figure out how to stretch or how to do his exercises at home—he was pretty much homebound, taking care of his son.

Id.

The February 13, 2012 Prescriptions

On February 13, 2012, Respondent issued B.B. new prescriptions for both 120 Opana 10 and 90 Morphine Sulfate ER 15, with the same dosing instructions as the previous prescriptions. GX 5, at 3 & 23. As noted previously, the lab reported the results of the January 19, 2016 urine drug test on January 31, 2012, GX 3, at 97; and thus Respondent should have had the results by this date. Tr. 153. As explained previously, other than the undated notation on the Lab Report that B.B. was ''counseled to only take what is prescribed,'' the only documentation in the progress notes for this date (which is written at the bottom of the January 27, 2012 progress note) is the following: ''Zpack, Prednisone 10 mg # 28, Phenergan.'' GX 3, at 44.

Dr. Owen testified that there should have been an office visit ''in light of the previous aberrant drug-taking behaviors and the lack of medical necessity [having been] established to treat with controlled substances.'' Tr. 154. He further explained that Respondent ''need[ed] to establish medical necessity and establish a therapeutic benefit, and now we have another aberrant drug test in late January.'' *Id.* While he acknowledged that Respondent documented that he counseled B.B. to take only what is prescribed, Dr. Owen testified that this was not an adequate safeguard to prevent abuse or diversion, ''especially since this [was] the third aberrant urine drug test.'' *Id.* Asked what Respondent should have done, Dr. Owen testified that ''you need to have a long discussion with the patient about the risk of addiction [29] and get some consultations by experts in [the] field of addiction.'' *Id.* at 155. Based on the absence of any such documentation in the file, *see generally* GX 3, and that Respondent never claimed to have obtained any consultations, I find Respondent did not obtain a consultation with an expert in addiction.

Moreover, Dr. Owen again found that the patient record did not justify the prescribing of controlled substances and further noted that the ''medical necessity for the prescriptions ha[d] not been established in any of the previous evaluations.'' Tr. 155. He further opined that the Opana and morphine prescriptions issued on this date lacked a legitimate medical purpose and were issued outside of the usual course of professional practice. *Id.* at 155–56.

Respondent testified that he had reviewed the drug test results and had directed his staff to pull a PMP report. *Id.* at 335. He also acknowledged having written the notation that ''patient was counseled to only take what is prescribed.'' *Id.* Asked by his counsel if ''red flags [were] raised by these test results,'' Respondent answered:

> [t]he red flag that I saw—the morphine said not detected, but the oxymorphone was positive, so that was explainable. The nordiazepam, the oxazepam, and then the Xanax, the lab always said that if . . . Xanax was positive, that they could all three be positive. The temazepam, in our practice, usually didn't show up, and temazepam is a sleeping pill called Restoril.
>
> And so I wanted to pull the chart, and so Dr. Schoelen didn't mind his pain patients being on Restoril. I did, and so I wanted to make sure, has he been prescribed Restoril. I couldn't find it on the PMP, so I'm sure what was told was, if you have an old Restoril or some other doctor, I do consider that breaking our rules, and so you can't take it.

Id. at 335–36.

Notably, while the PMP report shows that B.B. had received a number of prescriptions for Ambien (zolpidem), it does not list any prescriptions for temazepam. GX 3, at 22–26. Nor do the progress notes during the period in which B.B. was being treated by Dr. Schoelen contain any indication that Schoelen had prescribed temazepam to B.B. *Id.* at 50–62. And Respondent offered no testimony that he ever asked B.B. from whom he obtained the Restoril, and the chart contains no documentation that he did. In any event, even if the lab had told Respondent that using alprazolam could also trigger false positives for diazepam and oxazepam, this was still an aberrational result and was, in fact, the third aberrational UDS that B.B. had provided in less than eight months.

Asked by the CALJ why he did not find the non-detection of morphine to be ''an anomaly,'' Respondent asserted that this was because oxymorphone is a metabolite of the former. *Id.* at 336. When then asked ''[w]hy wouldn't it show morphine positive then if the person's on morphine,'' Respondent testified ''[t]hat would occur occasionally.'' *Id.* Respondent then speculated that B.B. ''probably did not take two medications on that day. Most likely it was over the 30 days since his last prescription, but it was still in his system, that it had been taken recently.'' *Id.* Respondent then asserted that ''[t]he same is true, the exact same thing for the carisoprodol, which is Soma. It's on the next page, page 98 [of the Exhibit], shows that meprobamate was positive'' and ''the comments section says, 'Test result is expected based on prescribed medications.''' *Id.* at 337.

It is true that meprobamate is a metabolite of carisoprodol—as noted by the lab itself on the reports. *See* GX 3, at 96–98, 100, 104; *see also* 76 FR at 77340 (carisoprodol scheduling order). Moreover, when B.B. was under Dr. Schoelen's care and being prescribed hydrocodone, the lab reports noted that B.B. had tested positive for hydromorphone and that this drug ''is a metabolite of hydrocodone,'' thus rendering the test result ''expected with [the] prescribed medications.'' *See id.* at 99, 103, 104, 105, 106. Unexplained by Respondent is why, if oxymorphone is a metabolite of morphine, the lab did not indicate that on the reports as it did when it noted that meprobamate and hydromorphone were metabolites of carisoprodol and hydrocodone respectively. Of further note, Respondent did not testify as to his basis of knowledge for this assertion.

However, as found above, B.B. had last obtained a morphine prescription on December 15, 2011, 35 days before the January 19 visit, and if taken as directed, B.B. would have run out of his

[29] Dr. Owen was not asked to provide details as to what specific areas would be discussed in such a conversation.

morphine five days earlier. GX 3, at 23. The Government produced no evidence as to how long morphine at this dosing would still be detectable in urine after it was last taken. Nonetheless, based on the presence of temazepam which was not prescribed, the January 19 drug test was still aberrational.

The March 13, 2012 Prescriptions

On March 13, 2012, Respondent issued B.B. new prescriptions for both 120 Opana 10 and 90 Morphine Sulfate ER 15, with the same dosing instructions as the previous prescriptions. *See* GX 5, at 10, 24. Respondent issued the prescriptions without requiring an office visit by B.B. Tr. 156, *see generally* GX 3, at 42–62 (visit notes for B.B.). Nor is there any notation on any of the visit notes regarding Respondent's issuance of these prescriptions.[30]

Dr. Owen testified that Respondent should have required an office before issuing these prescriptions, reiterating that the ''medical necessity for'' the prescriptions still had not been established. Tr. 156. Asked to again identify the deficiencies which led him to conclude that Respondent had not established medical necessity, Dr. Owen explained:

> Reviewing all the pertinent previous medical records, including what previous treatments have been performed, an adequate history and physical exam, consultations as medically appropriate, establishing a clinically meaningful and objective therapeutic benefit, and addressing any aberrant drug-taking behaviors.

Id. at 157. Dr. Owen then noted that there were three previous incidents of aberrant drug-taking behaviors, and that ''[t]he only treatment plan has been continuing the controlled substances without medical necessity.'' *Id.* at 158. And once again, Dr. Owen testified that the prescriptions lacked a legitimate medical purpose and ''were not'' issued in the usual course of professional practice. *Id.*

In his direct testimony, Respondent did not address his reasons for issuing the March 13 Opana and morphine prescriptions. *See* Tr. at 338–39. Instead, the questioning centered on why he wrote a prescription on March 14 for Nexium, ''a stomach medicine'' and a non-controlled drug (''I have no idea'') after which the questioning moved on to the next set of prescriptions. *Id.*

The April 12, 2012 Visit and Prescriptions

On April 12, 2012, B.B. saw Respondent for an office visit. GX 3, at 42. According to the visit note, B.B. ''report[ed] his pain has been worse,'' that ''[h]e has run out of his medicines; he had them stolen,'' and that ''[h]e has done fairly well.'' *Id.* Moreover, on the Treatment Objective Evaluation section of the Treatment Plan, Respondent wrote ''fair → yes'' in the block for ''Has patient achieved treatment objective?'' and ''6'' in the block for ''Patient Completed . . . updated pain scale.'' *Id.* at 28.

In the visit note, Respondent wrote that B.B. ''still has severe anxiety and depression'' and has been ''exposed to someone with HPV''; Respondent then wrote: ''[h]e is also wanting to switch his medicines because he is having trouble finding the OPANA.'' GX 3, at 42. Respondent also noted: ''[p]ast medical history extensively reviewed and placed in chart.'' *Id.*

In his exam findings, Respondent noted ''[l]ow back paraspinal and spinal tenderness,'' ''[n]egative straight leg raise,'' and ''[n]euro intact.'' *Id.* Respondent listed his diagnoses as ''[l]umber disc disease,'' ''[a]nxiety and depression'' and ''[e]xposure to infectious disease,'' although he ''doubt[ed] that it was HPV.'' *Id.* Respondent then changed B.B.'s medications to Opana ER (extended release) 20 mg b.i.d. (twice per day) and Percocet 10 mg (q. 12h) p.r.n. (as needed) for acute pain. *Id.; see also* Tr. 340. He also prescribed Soma (carisoprodol) one tablet b.i.d. GX 3, at 42.

Respondent further documented that he discussed the ''[a]ddictive, dependence, and tolerance nature of the medicines, as well as alternatives.'' *Id.* He noted that he ''suggested'' ''[n]on-medicinal pain and anxiety-relieving modalities.'' *Id.*

Respondent also required B.B. to undergo a urine drug screen. While the preliminary screen shows that B.B. tested positive for oxycodone (which had not been prescribed to him) and negative for opiates/morphine (which he had been prescribed), the line on the form for noting the oxycodone result includes the parenthetical ''synthetic & semi-synthetic opiates'' and the form contains no separate entry for oxymorphone, which is a semi-synthetic narcotic. GX 3, at 63. Notably, the Government produced no evidence as to whether a positive result for oxymorphone would show up as positive for oxycodone or as positive for ''opiates/morphine.'' Moreover, Dr. Owen acknowledged that there are reliability issues with this type of test and thus, ''you would send it off for a confirmatory mass spectroscopy test.'' Tr. 164. However, according to Dr. Owen, the results are still valid until the confirmation shows otherwise. *Id.*

Respondent did send B.B.'s. urine sample to the lab for further testing. GX 3, at 96. According to the lab report, which was reported back to Respondent on April 17, 2012, B.B. tested positive for oxymorphone, which was expected based on Respondent's having prescribed Opana to him. *Id.* He also tested positive for meprobamate, which was expected based on Respondent's having prescribed carisoprodol to B.B. *Id.* However, the lab further found that morphine was ''not detected,'' a result which was ''not expected'' because Respondent had prescribed morphine sulfate ER to B.B. on March 13, 2012. *Id.* Dr. Owen also noted that while ''the confirmed . . . drug test [was] positive for some of these drugs,'' Respondent had reported that he had run out of his medicines and that there was a ''lack of documentation of what he ran out of and what he should still be on, so . . . there's problems in interpreting this urine drug test.'' Tr. 167.

Dr. Owen testified that Respondent did not address the aberrant preliminary drug screen conducted on April 12 nor any of the previous aberrant drugs tests at this visit. *Id.* at 165–66. However, as found above, on the January drug test report, Respondent did note—but without specifying the date that he did so—that he had counseled B.B. to take only what was prescribed.

The Government also asked Dr. Owen if it was noteworthy that B.B. had told Respondent that his pain was worse, that he had run out of his medicines and had them stolen. *Id.* at 159. Dr. Owen answered:

> Well, one, his pain is worse, so why is it worse? Two is he's run out of his medications, and then he had them stolen. What is it? Did you run out of them because you self-escalated, or were they stolen and you ran out of them? It needs clarification. But either event, self-escalation or having them stolen, is a red flag.

Id.

Dr. Owen then noted that B.B.'s pain contract stated that ''lost and stolen medications will not be replaced,'' *id.* at 160, but acknowledged on cross-examination that Respondent had not provided an early refill of the prescriptions. *Id.* at 200. However, regarding B.B.'s report that his medications were stolen, Dr. Owen further testified that because there had

[30] As found above, on the January 27, 2012 visit note, Respondent had written that on ''2/13/12'' he prescribed ''Zpack, Prednisone 10 mg # 28, Phenergan.'' GX 3, at 44. The same visit note contains a further entry for ''2–22–12'' documenting the issuance of a prescription for 60 tablets of Soma (carisoprodol) 350 mg. *Id.*

''been the aberrant urine drug tests before . . . this, there is [sic] enough aberrant behaviors that'' Respondent needed ''to get the person to an addictionologist or a psychologist, or just stop prescribing these controlled substances since there's no evidence they're helping this gentleman.'' *Id.* at 212–13.

Dr. Owen also found problematic the notations in the visit note that B.B. reported that ''his pain has been worse'' and that ''[h]e has done fairly well.'' *Id.* at 160. As Dr. Owen testified, the statement that ''[h]e has done fairly well . . . kind of conflicts with his pain is worse and the aberrant drug-taking behavior, so that's an unreliable statement.'' *Id.* Dr. Owen also explained that B.B.'s having ''severe anxiety and depression . . . are relative contraindications to prescribing controlled substances . . . [b]ecause it magnifies [the] perception of pain and disability.'' *Id.* Dr. Owen then testified that because of these conditions, Respondent should have requested a ''consultation by a psychologist'' but did not. *Id.* at 160–61.

Dr. Owen further testified that Respondent ''did not'' address B.B.'s ''ongoing stress and anxiety issues,'' and that ''[h]e did not'' conduct a thorough patient history. *Id.* at 166. He then testified that Respondent had changed B.B.'s treatment plan by adding Percocet, but that Respondent ''change[d] the medications without ever . . . documenting [a] medical rationale to add any new medication.'' *Id.* Asked by the CALJ ''why would someone add Percocet,'' Dr. Owen testified that it is a short-acting opioid that could be added ''for break-through pain, if that's not being controlled well.'' *Id.* at 167.

With respect to Respondent's notation that he had discussed ''[a]ddictive dependency and tolerance nature of these medications as well as alternatives,'' *id.* at 167, Dr. Owen noted that ''there's no real substance to that statement'' as a statement of informed consent. *Id.* at 168. He then explained that the statement ''[l]acks any details about what alternative treatments were discussed, and . . . B.B.'s already demonstrated several aberrant drug-taking behaviors.'' *Id.* Continuing, Dr. Owen explained that ''[t]he potential of addiction is very high in this individual, and I think you just can't say something as generic as this statement and [not] have any meaningful documentation behind it.'' *Id.*

Dr. Owen was also asked about entries in a PMP report in B.B.'s file which showed the controlled substance prescriptions he obtained and filled from April 12, 2011 through April 11, 2012. Tr. 170–72. The report showed that on March 14, 2012, B.B. had obtained and filled a prescription from another provider (R.H.) for 60 alprazolam 1 mg, which was a 30-day supply and that on April 6, 2012, he had obtained and filled another prescription from R.H. for 30 alprazolam 1 mg. *Id.* at 170–71. Dr. Owen testified that this was an early refill, as the March 14 prescriptions should have lasted until approximately the middle of April. *Id.* at 171. According to Dr. Owen, this ''could represent [that] the person is self-escalating their medications.'' [31] *Id.*

Dr. Owen testified that Respondent should have addressed the early refills because although he did ''not prescrib[e] this drug, it is a reflection of B.B.'s ability to self-regulate his controlled substance use.'' *Id.* at 172. However, Dr. Owen then testified that an early refill does not necessarily mean that B.B. was abusing his medication if it was ''a one-time situation.'' *Id.* While Dr. Owen testified that ''if you're prescribing, you might call the treating doctor that is prescribing and get clarification. But when you have a pattern of early refills, it's hard to explain that the office is closed for a holiday or a weekend and that justifying the medical necessity to prescribe early.'' *Id.* at 172–73. However, given that the alprazolam prescription issued on February 15 was at most three days early and the March 14 prescription was at most two days early, the evidence does not establish a pattern of early refills but only a single early refill. Thus, I place no weight on Respondent's failure to contact Dr. R.H. regarding the alprazolam refills.

Continuing, Dr. Owen reiterated his earlier testimony that the patient record was ''not adequate'' to establish ''medical necessity'' for prescribing the controlled substances on this date and that between September 22, 2011 (when he assumed the care of B.B.) and April 12, 2012, Respondent had not established medical necessity for the drugs. *Id.* at 173–74. He then opined that the prescriptions Respondent issued at this visit were issued outside of the usual course of professional practice and lacked a legitimate medical purpose. *Id.* at 174.

Regarding the April 12 visit, Respondent testified that B.B. ''said he perceived [his] treatment objective was fair'' and that ''[t]here's a 'yes' this time instead of just fair.'' *Id.* at 339. Asked by his counsel if B.B. was able to work at that point, Respondent answered ''[n]o'' and that ''[h]e ha[d] not worked any at that point.'' *Id.* at 353. When then asked why he wrote ''yes'' there, Respondent testified that he did not recall. *Id.*

Respondent also testified that ''[h]is pain had gone from a 7 in January to a 6.'' *Id.* at 339. Later, he testified that ''[m]y subjective said his pain was worse, but it was a 6, and my last note said it was a 7.'' *Id.* at 353. Respondent then asserted that B.B.'s pain rating ''was still above the 4 to 5 [that] the Joint Commission says . . . needs to be addressed.'' [32] *Id.*

Respondent further testified that he had not replaced the stolen medication. *Id.* at 341. As for how B.B. had managed after his medications were stolen, Respondent testified that while ''the notes don't necessarily reflect it . . . he had a family member, and I don't remember who it was, but someone had held some pain medicines for him, and he was trying to stretch them out to make sure that he didn't run out.'' *Id.* Continuing, Respondent asserted that B.B. did this ''[b]ecause he knew how important his drug screen would be positive, and so he always kept some medicine back'' by placing it in ''an old bottle.'' *Id.*

At this point, the CALJ interjected that he did not ''understand this, because if a person says that my medicines were stolen, the medicines are going to be gone'' and ''they won't have medicines to keep taking them.'' *Id.* at 342. After Respondent acknowledged that he ''tell[s] stories,'' he explained that the more he ''did pain medicine, the more [he] found out there is such a culture, everyone wanting their pain medicines . . . that many of them keep them in a separate bottle . . . for safety'' and ''keep a stash in a different place'' from their other prescriptions. *Id.* Then asked by the CALJ if it made sense that B.B. reported that his drugs were stolen but stretched them out, Respondent answered that it

[31] The Government attempted to make the same point with respect to the alprazolam prescriptions issued by R.H. on February 15 and March 14, 2012 and filled by B.B. the same day. Tr. 171; *see also* GX 3, at 22. However, 2012 was a leap year, and thus, the March 14 prescription was filled 28 days after the February 15 prescription, rendering it only two days early. The Government also attempted to establish that the February 15 prescription was an early refill, because B.B. had obtained a refill of alprazolam on January 20, 2012, thus rendering the February 15 prescription four days early. Tr. 171–72; *see also* GX 3, at 22–23. As for the latter prescription, according to the calendar for February 2012, February 19 was a Sunday and there is no evidence as to whether the practice was open on February 18.

[32] Respondent also testified as to the contents of the visit note, largely reading into the record what the notes contained. However, he noted, *inter alia,* that B.B. had ''reported subjectively . . . that his pain had been a little worse,'' as well as that his straight leg raise was now negative and not ''questionable'' as he noted at the previous visit. *Id.* at 340.

did because he knew that ''most of my patients keep extra pills or keep them in a different place'' in their house. *Id.* at 343.

In his testimony, Respondent agreed with the CALJ that he preferred prescribing extended release drugs, and that these formulations require a patient ''to keep a certain amount in [his] system so that [he] would have relief from [his] pain'' and be able ''to engage in the [ ] activities of daily living.'' *Id.* at 344–45. The CALJ then asked: ''doesn't it seem to you unusual that a person would be keeping some of those back?'' *Id.* at 345. Respondent testified that ''[i]t would have before I started doing pain management.'' *Id.* Continuing, he maintained that ''[i]t's very common that [patients] keep a stash of their medicines in an old bottle or take some with them, because they are absolutely paranoid of having their medicine stolen, and it is such a common thing for drug seekers, and basically the medicines are highly sought after, even amongst their family members.'' *Id.* Respondent then maintained that ''[m]any of them have lockboxes in their house, where they actually have their pills. . . . And so it's not unusual in my practice at all for patients to keep a separate container of their medicine.'' *Id.*

Respondent offered no explanation as to how a patient could forgo taking extended release medication to create ''a stash'' while still managing his pain. In any event, Respondent offered no evidence that he even asked B.B. when the purported theft had occurred, which drugs had been stolen, and when B.B. had last taken the drugs he prescribed.

As for why he changed B.B.'s medication, Respondent testified that ''Opana was very difficult to get in some of the pharmacies'' as some of the pharmacies ''couldn't get it from their suppliers'' and he had a policy of requiring patients to obtain their medications at a single pharmacy. *Id.* at 346–47. Respondent was then asked by his counsel: ''so the Percocet took the place of what?'' *Id.* at 347. Respondent answered: ''I used the Opana ER, because he had had good luck with the Opana short-acting, so I swapped him and used the Opana ER'' as it was on Medicaid formulary and easier to obtain because ''it was very, very expensive'' and ''didn't have a supply problem, because people on the street or private-pay people couldn't pay for it.'' *Id.* Respondent then explained that he ''changed [B.B.] off the long morphine to Percocet . . . [b]ecause I wanted another . . . short-acting . . . for his break-through'' pain. *Id.* Respondent testified that he wrote only for a two-week supply of the medications. *Id.* at 348–49.

While Respondent acknowledged that ''having chronic pain [can] lead to worse anxiety and depression'' as well as that ''uncontrolled anxiety or depression [can] lead [ ] to more pain,'' *id.* at 409, he admitted that he never consulted with the mental health providers that B.B. was seeing. *Id.* at 408. Asked by the CALJ whether it was ''within the standard of care'' for him and B.B.'s mental health provider to have ''ke[pt] treating [B.B.] without talking to each other,'' Respondent answered that ''[t]he mental health providers are very good about speaking to us about patients.'' *Id.* at 409. Then asked by the CALJ ''[h]ow about the other way around,'' Respondent answered: ''[i]f you felt it was necessary, you could report on information, I'm sure.'' *Id.*

Continuing, the CALJ asked Respondent if ''a mental health provider [is] prescribing controlled substances simultaneously with you, ordinarily will you consult with the mental health provider?'' *Id.* Respondent answered:

> We've become quite reliant on the PMPs now. Before the PMP, there was quite a bit of cross-talk, because you would get pharmacists [who] would call you and say, did you know that they're [sic] seeing so and so, or they're [sic] taking this, that or the other. And so there was much more of a need to try and get ahold [sic] of them. But we've become very reliant on the PMPs now to track that.

Id. at 409–10.

The CALJ then asked Respondent ''if two practitioners are simultaneously providing controlled substances [to] the same patient, wouldn't the two practitioners talk to each other about [that] approach?'' *Id.* at 410. Respondent answered: ''Absolutely. In every other field but mental health we do do that, and actually we don't treat the same—we don't treat with pain medication any patient that's seeing another doctor for pain. We don't go and side talk at all.'' *Id.*

This answer prompted the CALJ to ask: ''but with a mental health practitioner, if that practitioner is also prescribing controlled substances, you wouldn't consult with them and—or ask anything about that patient?'' *Id.* Respondent testified: ''[t]hat doesn't happen very often.'' *Id.* Indeed, notwithstanding that on the date of B.B.'s first visit to Respondent's clinic, he identified Wellbutrin and alprazolam as drugs which he was either then taking or had recently used, *see* GX 3, at 5; there is no evidence that Respondent (or Dr. Schoelen) ever discussed B.B.'s psychiatric issues with his mental health providers. *See generally* GX 3.

The April 25 Prescriptions

On April 25, 2012, Respondent provided B.B. with a prescription for 30 Roxicodone (oxycodone) 15 mg. GX 5, at 4. B.B.'s file contains no documentation that there was an office visit, and notwithstanding that this was a change in medication from what Respondent had prescribed at the previous visit, there is no notation in the progress notes as to why he changed the prescription. *See generally* GX 3; *see also* Tr. 174–75. Moreover, while Respondent testified that he would ''routinely'' make an entry in the Treatment Objective Evaluation section of the Pain Management Treatment Plan ''if we were making a change in a medication,'' Tr. 357, no such entry was made on this date. *See* GX 3, at 28. Nor is there any documentation in the patient file that Respondent addressed with B.B. the aberrant drug test result (the non-detection of morphine) which had been reported to him on April 17. *See generally* GX 3.

According to Dr. Owen, when adding a new drug to a patient's regimen of pain medications, a physician ''would have to establish medical necessity with some type of note, using sound medical rationale.'' Tr. 175. Dr. Owen further testified that making such a notation is ''a standard of care, and it's part of the documentation guidelines that are issued across every state for the most part.'' *Id.* Asked if he could think of a reason why a physician ''would add a drug for the first time without seeing a patient,'' Dr. Owen answered: ''No. Or at least documenting the medical rationale and establishing medical necessity.'' *Id.* at 176. Dr. Owen then testified that Respondent did not take appropriate steps to establish medical necessity for the prescription, reiterating his earlier testimony that Respondent had not demonstrated that conservative care had been tried and been unsuccessful, as well as that there was a ''clinically meaningful and objective therapeutic benefit from the previous use of controlled substances.'' *Id.* He again opined that the prescription was not issued in the usual course of professional practice and lacked a legitimate medical purpose. *Id.*

Regarding the Roxicodone prescription, Respondent asserted that he ''was just doing a two-week trial, trying to figure out his dose, and at the time, most likely the patient didn't have any punches on his card left, and Roxicodone is much cheaper than Percocet, and it's the same medication.'' *Id.* at 355. However, Respondent

documented none of this in B.B.'s record. Nor did he explain why he failed to follow his routine of making an entry in the Treatment Objective Evaluation section of the Pain Management Treatment Plan given that he had changed B.B.'s medication.

As for why he did not take any action with regard to the lab's finding that the April 12 drug test result was negative for morphine sulfate, Respondent asserted that the result was not aberrant. *Id.* at 366. In addressing this prescription, Respondent offered no further explanation as to why he deemed the result not aberrant. However, with respect to the January 19 UDS lab report, which was also negative for morphine, Respondent asserted that oxymorphone is a metabolite of morphine and thus he did not consider the negative result to be aberrant. *Id.* at 336. He asserted this notwithstanding that with respect to other drugs such as hydrocodone and carisoprodol, the lab specifically reported when it detected the presence of metabolites of these drugs, such as hydromorphone for hydrocodone and meprobamate for carisoprodol. Yet, the lab report contains no notation that oxymorphone is a metabolite of morphine. Nor did he testify as to his basis of knowledge for this claim.

Pursuant to 5 U.S.C. 556(e), I take official notice that morphine does not metabolize into oxymorphone. *See* Edward J. Cone, *et al., Evidence that Morphine is Metabolized to Hydromorphone But Not to Oxymorphone,* 32 J. Analytic Toxicology 319, 323 (2008) (finding, based on study of urine drug screens using liquid chromatography-tandem mass spectrometry conducted on 34 patients taking morphine exclusively for chronic pain, that while ''hydromorphone was demonstrated to be a minor metabolite . . . no evidence was found that oxymorphone is a metabolite of morphine'' and ''that a positive urine test for oxymorphone can arise only from oxymorphone or oxycodone administration, and not from morphine or hydromorphone administration''); *id.* at 319 (characterizing as ''unsubstantiated'' the ''claim of a new metabolic pathway leading from morphine to hydromorphone to oxymorphone'').[33]

The May 9, 2012 Prescriptions

On May 9, 2012, Respondent wrote B.B. a prescription for 60 Opana ER 20 mg. GX 3, at 93; GX 5, at 27. Respondent did not require an office visit, and he made no notations in the progress notes regarding the prescription. *See generally* GX 3; *see also* Tr. 177–78. Regarding the prescription, Dr. Owen again testified that Respondent ''needed to establish medical necessity for continuation of controlled substances'' and ''did not.'' *Id.* at 178.

Asked why he refilled the prescriptions,[34] Respondent testified that ''I got a phone call that he was wanting his medicines refilled and that the [R]oxicodone had worked for him and *et cetera,* so we were converting him back into the one-month prescriptions in the Schedules IIs and going back to this three-month office visit.'' Tr. 356. Respondent offered no testimony addressing Dr. Owen's criticism that he still had not established that there was a medical necessity for prescribing controlled substances, which included the Opana. *See generally id.* at 356–57.

Asked to provide his opinion as to Respondent's prescribing of controlled substances from September 2011 through May 9, 2012, Dr. Owen opined that Respondent did not adequately review B.B.'s medical history. *Id.* at 178. He further opined that a treatment plan that established medical necessity ''would have logic behind the treatment'' and would have ''establish[ed] that conservative care has not been helpful and that [an] objective and clinically meaningful therapeutic benefit from the use of controlled substances has been established, if [they] ha[d] previously been used.'' *Id.* Dr. Owen then testified that none of the controlled substance prescriptions Respondent issued to B.B. were issued in the usual course of professional practice and for a legitimate medical purpose. *Id.* at 178–79.

Respondent's Evidence in Remediation

Respondent offered only vague testimony that he has taken ''extreme CME [continuing medical education] . . . in hospice care and pain medicine'' in 1995 and had done some ''reading'' on pain management. Tr. 235, 381. Respondent offered no further detail as to the subject matter of the CME course[s] he took. *See id.* As for his assertions that he had read articles on pain management and that he kept current with those articles, he admitted that he had not ''read anything in a couple of years'' and could not recall any articles he had read on pain management. *Id.* at 385–86.

Discussion

Section 303(f) of the Controlled Substances Act (CSA) provides that ''[t]he Attorney General may deny an application for [a practitioner's] registration . . . if the Attorney General determines that the issuance of such registration . . . would be inconsistent with the public interest.'' 21 U.S.C. 823(f). With respect to a practitioner, the Act requires the consideration of 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 . . . 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.

''[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 a registration should be revoked.'' *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

[33] 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 the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to show the contrary.'' Accordingly, Respondent may dispute my finding by filing a properly supported motion for reconsideration within 20 calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government; in the event Respondent files a motion, the Government shall have 20 calendar days to file a response.

[34] In her questioning of Respondent, his counsel referred to a Roxicodone prescription as having been issued on May 9, 2012 and in his testimony regarding the prescriptions he wrote on that date, Respondent referred to both a Roxicodone prescription and an Opana ER 20 mg prescription. Tr. 356. While GX 5 contains a legible copy of the May 9, 2012 Opana ER prescription, *see* GX 5, at 27, it does not contain a copy of a Roxicodone prescription, and as for GX 3, the copy of the purported Roxicodone prescription is illegible. GX 3, at 93. Because the Government failed to produce any reliable evidence to show that Respondent issued a Roxicodone prescription on May 9, 2012, I do not consider whether any such prescription was issued, nor whether Respondent complied with 21 CFR 1306.04(a) when he issued it.

Volkman, 567 F.3d at 222 (quoting *Hoxie,* 419 F.3d at 482)).[35]

The Government has the burden of proving, by a preponderance of the evidence, that the requirements for denial of an application pursuant to 21 U.S.C. 823(f) are met. 21 CFR 1301.44(d). However, once the Government has made a *prima facie* showing that issuing a new registration to the applicant would be inconsistent with the public interest, an applicant must then present sufficient mitigating evidence to show why he can be entrusted with a new registration. *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (citing cases)); *see also MacKay,* 664 F.3d at 817.

Having considered all of the factors, I find that the Government's evidence with respect to Factors Two and Four satisfies its *prima facie* burden of showing that granting Respondent's application would be inconsistent with the public interest.[36] I further find that Respondent has failed to produce sufficient evidence to rebut the Government's *prima facie* case.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Record of Compliance With Applicable Controlled Substance Laws

Under a longstanding DEA regulation, a prescription for a controlled substance is not ''effective'' unless it is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). Under the CSA, it is fundamental that a practitioner must establish a bonafide doctor-patient relationship in order to act ''in the usual course of . . . professional practice'' and to issue a prescription for a ''legitimate medical purpose.'' *See United States* v. *Moore,* 423 U.S. 122, 142–43 (1975); *United States* v. *Lovern,* 590 F.3d 1095, 1100–01 (10th Cir. 2009); *United States* v. *Smith,* 573 F.3d 639, 657 (8th Cir. 2009); *see also* 21 CFR 1306.04(a) (''an order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of [21 U.S.C. 829] and . . . the person issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances'').

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, [it] 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 *Moore,* 423 U.S. 122, 135, 143 (1975)).

Both this Agency and the federal courts have held that ''establishing a violation of the prescription requirement 'requires proof that the practitioner's conduct went ''beyond the bounds of any legitimate medical practice, including that which would constitute civil negligence.'' ' '' *Laurence T. McKinney,* 73 FR 43260, 43266 (2008) (quoting *United States* v. *McIver,* 470 F.3d 550, 559 (4th Cir. 2006)). *See also United States* v. *Feingold,* 454 F.3d 1001, 1010 (9th Cir. 2006) (''[T]he *Moore* Court based its decision not merely on the fact that the doctor had committed malpractice, or even intentional malpractice, but rather on the fact that his actions completely betrayed any semblance of legitimate medical treatment.''); *Jack A. Danton,* 76 FR 60900, 60904 (2011) (finding violations of 21 CFR 1306.04(a), in the absence of expert testimony, ''where a physician has utterly failed to comply with multiple requirements of state law for evaluating her patients and determining whether controlled substances are medically indicated and thus has ' ''completely betrayed any semblance of legitimate medical treatment'' ' '') (quoting *McKinney,* 73 FR at 43266 (quoting *Feingold,* 454 F.3d at 1010)).

However, as the Agency has held in multiple cases, ''the Agency's authority to deny an application [and] to revoke an existing registration . . . is not limited to those instances in which a practitioner intentionally diverts a controlled substance.'' *Bienvenido Tan,* 76 FR 17673, 17689 (2011) (citing *Paul J. Caragine, Jr.,* 63 FR 51592, 51601 (1998)); *see also Dewey C. MacKay,* 75 FR at 49974. As *Caragine* explained: ''[j]ust because misconduct is unintentional, innocent, or devoid of improper motive, [it] does not preclude revocation or denial. Careless or negligent handling of controlled substances creates the opportunity for diversion and [can] justify'' the revocation of an existing registration or the denial of an application for a registration. 63 FR at 51601.

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[35] 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 misconduct. *Jayam Krishna-Iyer,* 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration or the denial of an application. *MacKay,* 664 F.3d at 821.

[36] As to factor one, while the Oklahoma Board has taken disciplinary action against Respondent for conduct related to his prescribing to B.B., the Board has not made a recommendation to the Agency with respect to whether his application should be granted. To be sure, as a result of the Board's restoration of his medical license without restriction of his controlled substance prescribing authority under Oklahoma law, Respondent satisfies the CSA's prerequisite for obtaining a new practitioner's registration. *See* 21 U.S.C. 823(f)(1); *see also id.*§ 802(21). (defining ''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''). However, the restoration of Respondent's state authority 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.'').

To be sure, the Agency's case law contains some older decisions which can be read as giving more than nominal weight in the public interest determination to a State Board's decision (not involving a recommendation to DEA) either restoring or maintaining a practitioner's state authority to dispense controlled substances. *See, e.g., Gregory D. Owens,* 67 FR 50461, 50463 (2002) (expressing agreement with ALJ's conclusion that the board's placing dentist on probation instead of suspending or limiting his controlled substance authority ''reflects favorably upon [his] retaining his . . . [r]egistration, and upon DEA's granting of [his] pending renewal application''); *Vincent J. Scolaro,* 67 FR 42060, 42065 (2002) (concurring with ALJ's ''conclusion that'' state board's reinstatement of medical license ''with restrictions'' established that ''[b]oard implicitly agrees that the [r]espondent is ready to maintain a DEA registration upon the terms set forth in'' its order).

Of note, these cases cannot be squared with the Agency's longstanding holding that ''[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.'' *Levin,* 57 FR at 8681. Indeed, neither of these cases even acknowledged the existence of *Levin,* let alone attempted to reconcile the weight it gave the state board's action with *Levin.* While in other cases, the Agency has given some weight to a Board's action in allowing a practitioner to retain his state authority even in the absence of an express recommendation, *see Tyson Quy,* 78 FR 47412, 47417 (2013), the Agency has repeatedly held that a practitioner's retention of his/her state authority is not dispositive of the public interest inquiry. *See, e.g., 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 (D.C. Cir. 2008)).

As to factor three, I acknowledge that there is no evidence that Respondent has been convicted of an offense under either federal or Oklahoma law ''relating to the manufacture, distribution or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, there are a number of reasons why even a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor, let alone prosecuted for one. *Dewey C. MacKay,* 75 FR 49956, 49973 (2010), *pet. for rev. denied, MacKay* v. *DEA,* 664 F.3d at 822. The Agency has therefore held that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.*

While I have considered factor five, I deem it unnecessary to make any findings.

''Accordingly, under the public interest standard, DEA has authority to consider those prescribing practices of a physician, which, while not rising to the level of intentional or knowing misconduct, nonetheless create a substantial risk of diversion.'' *MacKay,* 75 FR at 49974; *see also Patrick K. Chau,* 77 FR 36003, 36007 (2012). Likewise, ''[a] practitioner who ignores the warning signs that [his] patients are either personally abusing or diverting controlled substances commits 'acts inconsistent with the public interest,' 21 U.S.C. 824(a)(4), even if [he] is merely gullible or naïve.'' *Jayam Krishna-Iyer,* 74 FR 459, 460 n.3 (2009); *see also Chau,* 77 FR at 36007 (holding that even if physician ''did not intentionally divert controlled substances,'' State Board Order ''identified numerous instances in which [physician] recklessly prescribed controlled substances to persons who were likely engaged in either self-abuse or diversion'' and that physician's ''repeated failure to obtain medical records for his patients, as well as to otherwise verify their treatment histories and other claims, created a substantial risk of diversion and abuse'') (citing *MacKay,* 75 FR at 49974).

In March 2005, the Oklahoma Board of Medical Licensure and Supervision issued its Policy Statement on the ''Use of Controlled Substances for the Treatment of Pain.'' Okla. Bd. of Med. Lic. & Super., *Use of Controlled Substances for the Treatment of Pain* (Mar. 10, 2005) (hereinafter, Policy Statement). Therein, the Board explained that it:

> will refer to current clinical practice guidelines and expert review in approaching cases involving management of pain. The medical management of pain should consider current clinical knowledge and scientific research and the use of pharmacological and non-pharmacological modalities according to the judgment of the physician. Pain should be assessed and treated promptly and the quantity and frequency of doses should be adjusted according to the intensity, duration of the pain and treatment outcomes.
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> . . . .
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> . . . The Board will consider prescribing, ordering, dispensing or administering controlled substances for pain to be for a legitimate medical purpose if based on sound clinical judgment. All such prescribing must be based on clear documentation of unrelieved pain. To be within the usual course of professional practice, a physician-patient relationship must exist and the prescribing should be based on a diagnosis and documentation of unrelieved pain. Compliance with applicable state and/or federal law is required.
>
> The Board will judge the validity of the physician's treatment of the patient based on available documentation, rather than solely on the quantity and duration of medication administration. The goal is to control the patient's pain while effectively addressing other aspect of the patient's functioning, including physical, psychological, social and work-related factors.[37]

Id. at 1–2.

Simultaneously with the issuance of its Policy Statement, the Board promulgated its regulation on the ''[u]se of controlled substances for the management of chronic pain.'' Okla. Admin. Code § 435:10–7–11. As the Board explained, its purpose was to adopt ''criteria'' to be used ''when evaluating [a] physician's treatment of pain, including the use of controlled substances.'' *Id.* The regulation thus sets forth criteria for the ''[e]valuation of the patient,'' the ''[t]reatment plan,'' ''[i]nformed consent and agreement for treatment,'' ''[p]eriodic review,'' ''[c]onsultation,'' and ''[m]edical records.'' *Id.*

With respect to the evaluation of the patient, the Rule states:

> A medical history and physical examination must be obtained, evaluated and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function and history of substance abuse. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.

Id. § 435:10–7–11(1). As for the treatment plan, the Rule provides:

> The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

Id. § 435:10–7–11(2).

After providing the criteria for informed consent and agreement for treatment, which states, *inter alia,* that ''[t]he physician should discuss the risks and benefits of the use of controlled substances with the patient,'' *id.* § 435:10–7–11(3), the Rule sets forth the criteria for the periodic review. The Rule states:

> The physician should periodically review the course of pain treatment and any new information about the etiology of the pain or the patient's state of health. Continuation or modification of controlled substances for pain management therapy depends on the physician's evaluation of progress toward treatment objectives. Satisfactory response to treatment may be indicated by the patient's decreased pain, increased level of function or improved quality of life. Objective evidence of improved or diminished function should be monitored and information from family members or other caregivers should be considered in determining the patient's response to treatment. If the patient's progress is unsatisfactory, the physician should assess the appropriateness of continued uses of the current treatment plan and consider the use of other therapeutic modalities.

Id. § 435:10–7–11(4).

With respect to consultation, the Rule provides:

> The physician should be willing to refer the patient, as necessary, for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those patients with pain who are at risk for medication misuse, abuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care, monitoring, documentation and consultations with or referral to an expert in the management of such patients.

Id. § 435:10–7–11(5).

And finally, with respect to medical records, the Rule states in relevant part that ''[r]ecords should remain current'' and that ''[t]he physician should keep accurate and complete records.'' *Id.* § 435:10–7–11(6). The records are ''to include . . . the medical history and physical examination,'' ''diagnostic, therapeutic and laboratory results,'' ''evaluations, consultations and follow-up evaluations,'' ''treatment objectives,'' ''discussion of risks and benefits,'' ''informed consent,'' ''treatments,'' ''medications (included date, type, dosage and quantity prescribed),'' ''instructions and agreements and periodic reviews.'' *Id.*

The CALJ rejected the bulk of the Government's case, finding the allegations proven only ''in part'' and only with respect to the prescriptions Respondent issued on October 6 and 20, 2011 (prescribing events 3 and 4), April 12 and 25, and May 9, 2012 (prescribing events 10, 11, and 12). Even then, however, the CALJ reasoned that ''[t]he

[37] *See also* Policy Statement, at 2 (''Allegations of inappropriate pain management will be evaluated on an individual basis. The Board will not take disciplinary action against a physician for deviating from this policy when contemporaneous medical records document reasonable cause for deviation. The physician's conduct will be evaluated to a great extent by the outcome of pain treatment, recognizing that some types of pain cannot be completely relieved, and by taking into account whether the drug used is appropriate for the diagnosis, as well as improvement in patient functioning and/or quality of life.'').

errant prescribing events established by the record reveal inattention to detail, not intentional diversion,'' R.D. at 82, only to subsequently conclude that ''Respondent violated his responsibility . . . to ensure that he only prescribed controlled substances for a legitimate medical purpose in the course of professional practice.'' *Id.* at 90 (citing 21 CFR 1306.04(a)); *see also id.* (''[T]hese prescribing events violated Oklahoma medical regulations, fell below the prevailing medical practice standard in Oklahoma, and did not fall within the state and federal definitions of the usual course of a professional practice.'' (citing Policy Statement, at 2; 21 CFR 1306.04(a))).

I conclude, however, that the Government has proved additional violations of 21 CFR 1306.04(a) beyond those found by the CALJ, and I further conclude that the evidence does not simply reflect ''inattention to detail'' on Respondent's part—a finding which is legally insufficient to support the conclusion that he violated 21 CFR 1306.04(a)—but rather, that he knowingly diverted drugs to B.B. I am mindful of the various credibility findings made by the CALJ, particularly with respect to the testimony of Respondent, as well as his finding that ''Dr. Owen's expert testimony predictably raised no issues regarding credibility'' but that his ''testimony was not without its own 'red flags.' '' R.D. 18. For reasons explained earlier, I respectfully disagree with the CALJ's reasons for declining to give weight to much of Dr. Owen's testimony, including his conclusion that Dr. Owen's testimony was based upon a misunderstanding of the nature of the Oklahoma Board's Pain Management Regulations. And to the extent the CALJ declined to consider the evidence of various UDS results with respect to the specific prescribing events on the ground that the Government did not provide adequate notice, as explained above, I conclude that Respondent had constitutionally sufficient notice and understood that the UDS results were at issue throughout the proceeding.

The September 22, 2011 Prescriptions

The CALJ rejected the Government's allegation that the Duragesic and Opana prescriptions issued by Respondent on this date violated 21 CFR 1306.04(a) because they were issued outside of the usual course of professional practice and lacked a legitimate medical purpose.[38] As found above, Dr. Owen testified that because this was B.B.'s first visit with Respondent and Respondent was taking over his care, Respondent should have ''do[ne] a proper history and physical exam,'' reviewed the ''previous treatments'' and done ''everything that typically is expected for a new patient evaluation.'' Tr. 131. Dr. Owen testified that Respondent performed ''a superficial evaluation that'' did not ''adequately explain the chief complaint or what previous treatments have or have not been done.'' *Id.* at 133.

Dr. Owen further noted that Respondent documented that B.B. had a negative straight leg raise and that this is ''the most sensitive physical finding for low back pain.'' *Id.* at 190. He then explained that ''a sensitive test means that if you don't have a positive finding you don't have that diagnosis.'' *Id.* Dr. Owen also testified that there was ''no evaluation of pain or function, physical or psychosocial in the documentation'' and ''no evidence of a previous therapeutic benefit'' from the use of controlled substances,'' nor ''proof that [B.B. had] exhausted conservative care before going [to the] high-risk treatment[ ]'' of ''prescribing controlled substances.'' *Id.* at 134. Dr. Owen thus concluded that because ''[t]here's no medical rationale for continuing with an ineffective treatment . . . there's no justification to continue'' to prescribe controlled substances. *Id.* at 133.

Dr. Owen further testified that Respondent's patient file contained two aberrant drug tests, the June 1, 2011 test, which did not detect alprazolam even though B.B. was obtaining the drug every 30 days, and the August 25, 2011 test, which detected the presence of nordiazepam, oxazepam, and temazepam, which the lab reported as not expected based on the prescribed medications. Dr. Owen testified that Respondent ''completely ignored'' the aberrant drug screens and that he ''should have acknowledged their existence and . . . taken some type of corrective action.'' *Id.* at 132. Dr. Owen then suggested that Respondent could have sent B.B. for an evaluation by an addictionologist or mental health professional (either a psychiatrist or psychologist) with experience in addiction medicine. *Id.* at 134. And he further testified that the patient file did not reflect that Respondent had discussed B.B. with either his current (such as the providers who were writing alprazolam prescriptions) or past prescribers (such as Dr. Schoelen). *Id.* at 132. Dr. Owen also noted that Respondent did not appear to have taken any safeguards against the potential for abuse or diversion. *Id.*

The CALJ found uncontroverted Dr. Owen's testimony that B.B. was a new patient and thus, Respondent was required to have done everything typically expected of a physician in the evaluation of a new patient, including a proper history and physical, reviewing previous treatments, and reviewing his patient file. R.D. at 33–34. The CALJ further found uncontroverted Dr.

[38] The CALJ asserted that in the Show Cause Order and its Prehearing Statement, ''the Government noticed a theory based in the issuance of prescriptions outside the course of a professional practice under 21 CFR 1306.04(a), not that any prescriptions were not issued for a legitimate medical purpose.'' R.D. 87–88. While then noting that ''the Government did *sporadically* elicit testimony from its expert in this regard ([citing] Tr. 93, 123, 133–34, 137–38, 140, 144, 148, 155–56, 158, 174, 176, 179) and did espouse this theory in its closing brief,'' the CALJ again asserted that this theory was unavailable to the Government because it raised the issue for the first time in its post-hearing brief. *Id.* at 88 n.150 (citing *Fred Samimi,* 79 FR 18698, 18713 (2014)).

I decline to adopt this ruling for multiple reasons. First, as several federal appeals courts have recognized, there is no material difference between the phrases ''usual course of professional practice'' and ''legitimate medical purpose,'' and thus the courts have sustained convictions for violating the regulation and 21 U.S.C. 841(a)(1), notwithstanding that an indictment charged the defendant ''with dispensing of a controlled substance not in the usual course of professional practice'' but did not allege that the dispensing lacked a legitimate medical purpose, as well as where the jury instructions only referenced the ''usual course of professional practice'' and did not require the jury to find that the defendant ''dispensed without a legitimate medical purpose.'' *See United States* v. *Fuchs,* 467 F.3d 889, 898–901 (5th Cir. 2006) (noting earlier decision that ''appears to use the phrases . . . interchangeably'').

Likewise, in *United States* v. *Nelson,* 383 F.3d 1227, 1230–31 (10th Cir. 2004), the Tenth Circuit found no error in a jury instruction which provided that a physician could be convicted of conspiracy under 21 U.S.C. 846, ''if it found the prescriptions were either without a legitimate purpose *or* outside the course of professional practice.'' As the Tenth Circuit explained, ''[i]t is difficult to imagine circumstances in which a practitioner could have prescribed controlled substances within the usual course of medical practice but without a legitimate medical purpose. Similarly, it is difficult to imagine circumstances in which a practitioner could have prescribed controlled substances with a legitimate medical purpose and yet be outside the usual course of medical practice.'' *Id.* at 1231. *See also United States* v. *Kirk,* 584 F.2d, 773, 784 (6th Cir. 1978) (''[T]here is no difference in the meanings of the . . . phrase, '[i]n the usual course of professional practice' and the . . . phrase, 'legitimate medical purpose.' '') (citing *United States* v. *Plesons,* 560 F.2d 890, 897 (8th Cir. 1977) and *United States* v. *Rosenberg,* 515 F.2d 190, 197 (9th Cir. 1975)).

Furthermore, even if these were two distinct theories for proving a violation of 21 CFR 1306.04(a), the record supports a finding of litigation by consent. The Government did not ''sporadically elicit testimony from its expert'' on this issue, but rather, asked Dr. Owen whether each of the prescriptions lacked a legitimate medical purpose. Respondent did not object to any of these questions, and thus, it is clear that unlike the issue in *Samimi,* which was raised for the first time by the Government in its post-hearing brief, Dr. Owen's testimony that each of the prescriptions lacked a legitimate medical purpose was not directed at an incidental issue, but rather went to the heart of the Government's case.

Owen's testimony that Respondent ignored the June 1 aberrant drug screen, that there was no evidence Respondent discussed B.B. with either his current or past prescribers, and that Respondent took no precautions against the potential for abuse or diversion. *Id.* at 34.

As for the aberrant drug tests, the CALJ asserted that ''there is little doubt that the June 1 UDS is aberrant to the extent it shows that B.B. was not taking his alprazolam,'' and that Dr. Owen's testimony that ''failing to act on this aberrant UDS fell below the prevailing standard . . . stands unrebutted [on] the record.'' *Id.* at 38. The CALJ, however, declined to consider this evidence, reasoning that it was not properly noticed by the Government in its pleadings with respect to this prescribing event. *Id.* at 38–39. For reasons explained previously, I disagree and find that Respondent had fair notice that the June 1 aberrant UDS was at issue throughout the proceeding.

Accordingly, I find that the June 1 drug test was aberrant and that Respondent breached the standard of care when he failed to address the test with B.B. prior to issuing the September 22, 2011 prescriptions. The CALJ, however, also rejected the Government's contention that the drug test of August 25, 2011, which showed the presence of nordiazepam, oxazepam and temazepam when these drugs had not been prescribed to B.B. by either Dr. Schoelen or his mental health professional, was also aberrant and not properly considered and addressed by Respondent prior to prescribing to B.B. R.D. at 38. While Respondent testified that he did not remember if he reviewed this UDS prior to the September 22 visit or at any point, Tr. 397, in the visit note, Respondent stated that B.B.'s ''[p]ast medical history was extensively reviewed.'' GX 3, at 48. Moreover, Dr. Owen credibly testified as to the need to obtain ''all . . . previous medical records pertaining to [the] chief complaint'' and review them to determine what previous treatments had been tried and their results, as well as ''to look for any previous aberrant behaviors.'' Tr. 94. And Dr. Owen further explained that ''if you don't look at all the pertinent previous medical records, you can't get an accurate diagnosis.'' *Id.* at 117. This testimony is unrefuted.

In rejecting the Government's contention that the August 25 test was aberrant, the CALJ did not make a credibility finding as to Respondent's testimony that he did not remember whether he reviewed the UDS at the time he was treating B.B. Nor did he make an explicit finding as to whether Respondent reviewed the UDS.

Instead, the CALJ reasoned that ''Respondent credibly testified that, based on his professional opinion and his conversations with personnel at the testing lab, a patient taking any benzodiazepine may test positive for any other benzodiazepine[,] [and] [t]hus, the Respondent *did not,* and does not view the August 25 UDS as anomalous.'' R.D. at 38 (emphasis added). After faulting the Government because it did not recall Dr. Owen ''to rebut Respondent's understanding about the limitations of the GC/MS,'' the ALJ explained that ''[t]here was nothing patently incredible about the Respondent's recollection of his conversations with the UDS lab about the limits of its testing.'' *Id.*

However, if, in fact, Respondent did not review the UDSs prior to prescribing (notwithstanding the notation that he ''extensively reviewed'' B.B.'s medical history), Dr. Owen's unrefuted testimony establishes that Respondent committed a gross breach of the standard of care in failing to do so. Of note, Respondent testified that Dr. Schoelen had instituted urine drug testing as a ''safeguard'' after Dr. Schoelen joined the American Academy of Pain Management and attended training, and that a drug test was done ''every three months'' on the clinic's ''chronic pain patients.'' Tr. 253–55. Thus, Respondent clearly knew that B.B. had been subjected to drug testing.

Moreover, if it is the case that Respondent did not review the August 25 drug test, then it is clear that Respondent's testimony as to what he was told by the lab was not offered to show his state of mind in failing to address the aberrant test result. Rather, it was offered to prove the truth of the matter asserted—that because of cross-reactions, ''a patient taking any benzodiazepine may test positive for any other benzodiazepine.''

Thus, Respondent's testimony was hearsay which was uncorroborated by either the testimony of a lab employee, an expert in drug testing, or articles from scientific or medical journals. The CALJ did not, however, analyze the reliability of the hearsay statements recounted by Respondent.[39] *See* R.D. at 37–40.

Notably, in his Response to the Government's Exceptions, Respondent does not maintain that this testimony was offered for the non-hearsay purpose of showing Respondent's state of mind when he failed to address the August 25 drug test with B.B. Response to Exceptions, at 4–6. Indeed, in his brief, Respondent argues only that ''there is no evidence that the written test results provided by . . . the drug testing company . . . are unreliable and inadmissible or that the results themselves are unreliable.'' *Id.* at 5. However, neither the August 25 nor the January 19, 2012 lab reports—each of which detected the presence of nordiazepam, oxazepam, and temazepam in addition to the metabolite of alprazolam—contain any statements to the effect that because of cross-reactions, taking alprazolam could result in a positive finding for the other three drugs. And as for Respondent's contention that there is no evidence that the test results are unreliable, that is the very point made by the Government. *Id.*

Moreover, even were I to consider Respondent's testimony on the issue of his state of mind—which would seem to require a finding that he did see the lab

[39] In multiple decisions, the Agency has made clear that the reliability of a hearsay statement should be evaluated by reference to the decisional law of the courts of appeals that would have jurisdiction over a subsequent petition for review; this includes the D.C. Circuit and the Tenth Circuit. As the D.C. Circuit has explained, ''hearsay may constitute substantial evidence depending upon its probative value and reliability, considering *inter alia,* possible bias of the declarant, whether [the] statements are signed and sworn to, whether they are contradicted by direct testimony, whether the declarant is available, and whether the hearsay is corroborated.'' *Hoska* v. *Department of the Army,* 677 F.2d 131, 138 (D.C. Cir. 1982) (quoted in *Mireille Lalanne,* 78 FR 47750, 47752 (2013)). By contrast, the Tenth Circuit does not appear to have set forth a set of factors for evaluating the reliability of hearsay in administrative proceedings. *See Roach* v. *NTSB,* 804 F.2d 1147, 1160 (10th Cir. 1986); *Cf. Bennett* v. *NTSB,* 66 F.3d 1130, 1137 (10th Cir. 1995) (declining to decide if uncorroborated hearsay can constitute substantial evidence in administrative proceeding ''given the existence of ample corroborative evidence-both nonhearsay and hearsay exceptions''); *Sorenson* v. *NTSB,* 684 F.2d 683, 686 (10th Cir. 1982) (declining to decide ''whether uncorroborated hearsay can constitute substantial evidence in administrative proceedings'').

Applying the *Hoska* factors, I conclude that the statement is not entitled to weight. Even assuming that the lab employee who made the statement was not biased, the statement was neither signed nor sworn to, Respondent did not identify the employee by name, and Respondent did not disclose that he intended to testify to the lab's statement in advance of the hearing notwithstanding that the CALJ's Order for Prehearing Statements directed that Respondent was ''to indicate clearly each and every matter as to which he intends to introduce evidence in opposition'' and the summary of each witness' testimony was ''to state what the testimony will be.'' ALJ Ex. 4, at 2. Moreover, that Order then stated ''that testimony not disclosed in the prehearing statement or pursuant to subsequent rulings is likely to be excluded at the hearing.'' *Id.* Given that Respondent did not disclose this testimony in advance of the hearing, I find that the declarant was not available. Moreover, as explained above, Respondent offered no other evidence to corroborate the lab's statement and the statement was contradicted in part by Respondent's testimony regarding the temazepam positive on the January 19 drug test.

report—as ultimate factfinder, I would not give it weight. While the Agency must accord some deference to an ALJ's findings on credibility issues where an ALJ observes the demeanor of the witness, ''[t]he findings of the [ALJ] are to be considered along with the consistency and inherent probability of [the] testimony.'' *Universal Camera Corp.* v. *NLRB,* 340 U.S. 474, 496 (1951).

Of consequence, B.B.'s January 19, 2012 drug test also detected the presence (in addition to that of alpha-hydroxyalprazolam, the metabolite of alprazolam) of nordiazepam, oxazepam, and temazepam. GX 3, at 97. Yet on this occasion, Respondent noted on the Lab Report that he had ''counseled [B.B.] to only take what is prescribed.'' GX 3, at 97. And in his testimony regarding the January 19 drug test results, Respondent stated that he made the notation because ''[t]he nordiazepam, the oxazepam, and then the Xanax, the lab always said that if . . . Xanax [alprazolam] was positive, that they could all three be positive. The temazepam, in our practice usually didn't show up, and temazepam is [a] sleeping pill called Restoril.'' Tr. 335; *see also* GX 3, at 105 (lab report of Dec. 7, 2010 in B.B.'s file reporting presence of alpha-hydroxyalprazolam but no other benzodiazepines even though the drugs screened for included diazepam, oxazepam, and temazepam).

Respondent offered no explanation for the inconsistency between his testimony regarding why he ''would not consider'' the August 25 drug test to be aberrant and his testimony as to why he deemed the January 19 drug test as aberrant, even though both tests reported the presence of the same four benzodiazepines, and in particular, temazepam. Most significantly, the CALJ did not address the inconsistency between Respondent's testimony regarding the August 25 and January 19 drug tests in making his credibility finding. *See* R.D. at 38.

I conclude, however, that for the same reason that Respondent deemed the January 19 test to be aberrant, I reject his testimony that he does not believe the August 25 test was aberrant and find that it was. I further find that this was now the second aberrant drug test that B.B. had provided in the previous four months.

I am also unpersuaded by the CALJ's reasoning for rejecting Dr. Owen's testimony as to the adequacy of Respondent's evaluation of B.B. The CALJ reasoned that the deficiencies identified by Dr. Owen ''generally relate to a paucity of documented proof in the chart entries'' as to whether Respondent had adequately evaluated B.B.'s chief complaint, the treatments he had previously undergone, his physical and psychosocial function, and whether the prescribing of controlled substances provided a therapeutic benefit. R.D. at 35–36. As explained above, the CALJ declined to give weight to Dr. Owen's testimony based on the erroneous legal conclusion that the Board's documentation and recordkeeping standards are permissive and not mandatory. The CALJ apparently credited Respondent's testimony in finding that ''B.B. reported pain, which was consistent with the findings of the exam the Respondent conducted on that date.'' *Id.* at 37. The CALJ also gave weight to Respondent's decision to change B.B's medications from Lortab, a short-acting medication which Dr. Schoelen had prescribed, to Duragesic (fentanyl) patches, which are long-acting, because in his view, short-acting medications are too addicting. *Id.* And the CALJ also reasoned that Respondent ''explained that he did not have B.B. undergo physical therapy because that approach had been tried without success . . . in the past.'' *Id.* at 38 (citing Tr. 392).

As to Respondent's claim that B.B. had undergone physical therapy for some time, Respondent admitted that this was not documented in the patient file. Tr. 392. Indeed, a review of the progress notes prepared by Dr. Schoelen finds no mention of B.B.'s having been referred to physical therapy, but rather, mentions only Dr. Schoelen's recommendations of such modalities as gentle stretching, low back strengthening exercises, heat, and low back range of motion exercises. *See* GX 3, at 51–54, 56, 59. Likewise, B.B.'s file does not contain either a copy of any referral or prescription for physical therapy, or a copy of any physical therapist's notes. Indeed, while Respondent cited to the Patient History Form in B.B's file (GX 3, at 34) and testified that ''[i]t says that under pain management, that he was in therapy every month on his past medical history,'' Tr. 392, that form does not even use the words ''pain management.'' *See* GX 3, at 34. Instead, the form contains a column with the heading of ''Chronic Problems,'' under which the entries state: ''Depression,'' ''Anxiety'' and then ''Therapy every month.'' *Id.* Patients in physical therapy, however, typically receive treatment several times a week and not ''every month.'' *Cf. United States* v. *Armstrong,* 550 F.3d 382, 389 (5th Cir. 2008) (explaining that ''[j]urors have had a wide variety of their own experiences in doctors' care over their lives,'' and can rely on those experiences when assessing evidence as to whether a physician lawfully prescribed controlled substances). And as noted previously, other evidence of record establishes that B.B. was seeing a psychiatrist and receiving alprazolam prescriptions on a monthly basis.

Accordingly, I do not find credible Respondent's testimony that he did not have B.B. go to physical therapy because B.B. ''had been on physical therapy monthly for quite some time and didn't feel that it was of any benefit at all.'' Tr. 392. Here too, because Respondent's testimony is inconsistent with the evidence (and lack thereof), I decline to adopt the CALJ's apparent credibility finding as to this testimony. I further agree with Dr. Owen's assessment that Respondent failed to properly assess whether B.B. had undergone conservative treatments.

As explained above, Dr. Owen also provided extensive testimony as to the standard of care for evaluating the history of a patient's pain complaint and the effect of the pain on a patient's physical and psychosocial functioning. Tr. 116. In his testimony, Dr. Owen identified various questions that Respondent should have asked B.B. and for which Respondent's September 22 visit note contains no evidence that he did so. *See id.* (''[H]ow did you hurt yourself; where does it hurt; does the pain radiate down an extremity; if so, how far down; does it go past the knee; where does it end up; is any numbness or weaknesses associated with it?''); *see also id.* (''And then you talk about what treatments have you had or what diagnostics have you had''). And with respect to the assessment of the effect of pain on a patient's functioning, Dr. Owen, after explaining that function is the ''primary baseline for measuring therapeutic influence,'' *id.* at 104, testified that a physician should ask a patient about his activities of daily living such as his ability to work and his ability to tolerate sitting, walking and standing. *Id.* at 106, 111. *See also* GX 3, at 33 (Patient Comfort Assessment Guide completed by B.B. on Sept. 2, 2009 which asked questions as to how pain interfered with his general activity, mood, sleep, enjoyment of life, ability to concentrate, and relations with other people). He also noted that in evaluating functionality, a physician would perform a neurological assessment, do a straight leg raise test, and look at the range of motion of the patient's spine. *Id.* at 111.

Respondent's note for this visit is totally devoid of any documentation that he asked B.B. how he hurt himself; whether his pain radiated down his extremities and if so, how far down; if the pain went past his knee; if he had

any weakness or numbness; how the pain effected various activities of daily living such as his ability to work, as well as his ability to tolerate sitting, walking and standing.[40] GX 3, at 48. Indeed, the only documentation Respondent made pertinent to B.B.'s ability to function was to note ''yes'' for whether he had achieved his treatment objective and the numbers ''3–5'' in the pain scale column. *Id.* at 28. *See* Okla. Admin. Code § 435:10–7–11(1) (''The medical record should document the nature and intensity of the pain, current and past treatment for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function and history of substance abuse.'').

Against this evidence, Respondent testified that B.B. reported pain which was consistent with the exam he conducted at this visit. Tr. 292. He also explained that he ordered an MRI because he ''wanted to make sure that'' the results were ''consistent with his pain,'' his physical exam, and ''the fact that he was on a schedule II narcotic.'' *Id.* at 293. Respondent also testified that he did not continue B.B. on Lortab (hydrocodone/acetaminophen) and prescribed fentanyl patches (a long-acting) narcotic medication because of the risk of abuse and addiction present with short-acting medications. *Id.* at 291.

While Respondent may have palpated B.B.'s lumbar region, he offered no testimony or other evidence refuting Dr. Owen's testimony that the straight leg raise test is ''the most sensitive physical finding for low back pain,'' and that ''if you don't have a positive finding you don't have that diagnosis.'' *Id.* at 190. While the CALJ acknowledged this testimony, *see* R.D. at 35 nn.68–69, he did not explain why the testimony was not entitled to weight in determining whether Respondent established medical necessity to prescribe controlled substances. As this testimony stands unrefuted, I conclude that Respondent did not establish a diagnosis.

As for Respondent's having changed B.B.'s medication from Lortab to Fentanyl patches, even long-acting schedule II medications are susceptible to abuse. Moreover, because Respondent performed only a superficial evaluation and did not establish a diagnosis and medical necessity to prescribe controlled substances, let alone two schedule II controlled substances, this evidence is entitled to no weight.[41]

I further hold that Respondent's issuance of the prescriptions for the fentanyl patches and Opana (oxymorphone) prescriptions was not merely malpractice. Rather, I conclude that the evidence supports the conclusion that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose when he prescribed these drugs to B.B. Here, not only did Respondent do a superficial evaluation as to B.B.'s purported pain complaint, his medical history, and the effect of the pain on his ability to function, he also performed a cursory examination which did not support his diagnosis, *id.* at 190, and ignored the results of the two aberrant drugs tests. As for the June 1 UDS, as the CALJ noted, ''Respondent never addressed the absence of [the alprazolam and] presented no explanation for his failure to react to the June 1 UDS.'' R.D. 36.

Moreover, even were I to credit Respondent's testimony that he ''doubt[ed]'' that he reviewed the drug tests performed by Dr. Schoelen and ''wouldn't expect [him]self to,'' Tr. 283, the evidence shows that Respondent clearly knew that B.B. was a chronic pain patient who was on multiple narcotics and was subject to drug testing. Dr. Owen credibly testified as to the importance of reviewing a patient's medical records to determine if the patient has a history of aberrant behaviors, *id.* at 94, yet Respondent maintained that he did not do so. Accordingly, I conclude that Respondent did not establish medical necessity to prescribe controlled substances and that he lacked a legitimate medical purpose and acted outside of the usual course of professional practice when he issued the Opana and Duragesic prescriptions. *See* 21 CFR 1306.04(a).

The October 6 Prescriptions

Here again, Dr. Owen testified that the medical record did not justify the prescribing of controlled substances. Tr. 137. Dr. Owen then explained that Respondent's evaluation of B.B. was superficial in that there was no assessment of B.B.'s pain and his physical and psychosocial functioning. Dr. Owen thus concluded that once again, Respondent had not established medical necessity to prescribe controlled substances and thus, he opined that the prescriptions ''were not'' issued in the usual course of professional practice and ''were not'' for a legitimate medical purpose. *Id.* at 137–38. Dr. Owen further explained that based on the aberrant drug tests, Respondent should have obtained consultations with mental health providers or addictionologists. *Id.* at 137. And based on the notation in the visit note that ''[n]ow, B.B. would like to try the morphine,'' Dr. Owen further faulted Respondent for not properly addressing B.B.'s request to try morphine. *Id.* at 135.

Explaining that ''[t]he principal issue raised by Dr. Owen and noticed by the Government'' with respect to these prescriptions ''centers on'' this notation, the CALJ found credible Respondent's testimony regarding B.B.'s request to try morphine, characterizing the notation as ''a poorly-worded memorialization of a longer conversation wherein he got medication efficacy input from B.B. and outlined several medication options based on the existing Oklahoma Medicaid formulary.'' R.D. 43. The CALJ then explained that ''[t]he progress notes related to issues regarding the Respondent's evaluation and treatment of a suspected upper respiratory ailment are likewise more consistent with a conscientious practitioner than a pill mill operator.'' *Id.*

Next, while the CALJ rejected the Government's contention that the

[40] There is likewise no evidence that Respondent had B.B. complete a new Patient Comfort Assessment Guide or that he asked him as to how the pain interfered with his general activity, mood, sleep, enjoyment of life, ability to concentrate and relations with other people.

[41] In his discussion as to why the Government had not proved that Respondent violated 21 CFR 1306.04(a) in issuing the September 22, 2011 prescriptions, the CALJ also explained that ''Dr. Owen's views about the relative merits of an MRI versus an X-ray or some other treatment is a medical treatment dispute that falls squarely outside the bounds of DEA's expertise and jurisdiction.'' R.D. 39 (citing *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006)). However, while Dr. Owen criticized Respondent's decision to order an MRI in response to questioning on cross-examination and by the CALJ because there was no clinical justification for doing so and MRIs lead to over-diagnosis, his opinion that Respondent did not establish medical necessity for the September 22 prescriptions was not based on Respondent's decision to order an MRI, but rather, the inadequacy of the evaluation of B.B.'s pain complaint, the failure to address the two aberrant drug screens, the lack of a positive finding on the straight leg raise test and the failure to exhaust conservative treatments.

So too, the CALJ took issue with Dr. Owen's testimony regarding ''Respondent's failure to make referral to other specialists.'' R.D. 39. However, Dr. Owen's opinion that Respondent did not establish medical necessity for the September 22 prescriptions was based on Respondent's superficial evaluation of B.B.'s pain and function, Respondent's failure to exhaust conservative treatments, and the lack of evidence of a therapeutic benefit. Tr. 133–34. While Dr. Owen did suggest that based on the two aberrant drug tests, Respondent ''could have sent'' B.B. to an evaluation by an addictionologist or a psychiatrist/psychologist with experience in addiction medicine, he also testified that there was a further alternative step that Respondent could have taken: he could have been ''much more careful and objective [as to] how [he] measure[d] a therapeutic benefit.'' *Id.* at 134. Thus, Dr. Owen's testimony is not fairly read as saying that such a referral was mandated at this visit.

August 25 UDS was anomalous based on ''Respondent's plausible and credible explanation,'' he then found that ''[t]he aberrant nature of the June 1 UDS is uncontroverted by the evidence.'' *Id.* The CALJ further found that the Government had proved that ''Respondent's actions in continuing to prescribe controlled medications without acting to investigate or institute safeguards upon encountering an anomalous UDS . . . fell below the standard expected of a prudent controlled substances prescriber.'' *Id.*

As explained previously, with respect to those instances in which he found violations, the CALJ simply concluded that Respondent's actions were neglectful. However, even accepting the CALJ's credibility finding with respect to Respondent's testimony regarding B.B.'s request to try morphine, I find that the evidence still supports the conclusion that Respondent violated 21 CFR 1306.04(a) in issuing the prescriptions for both morphine ER and Opana (oxymorphone).

As explained in my discussion of the September 22nd prescriptions, I conclude that the August 25, 2011 UDS was anomalous. And as also discussed previously, I find that the Board's documentation and recordkeeping provisions are mandatory and thus, Dr. Owen's testimony should be given weight.

In refutation of Dr. Owen's testimony that Respondent's evaluation was inadequate, Respondent testified that B.B. reported that ''his objectives were only fair'' and that his pain level had increased to a six out of ten. Respondent further noted that he did ''a full exam'' but that ''[t]he MRI was not back yet.'' Tr. 295.

As the CALJ noted, Respondent ''admitted that this part of the patient visit went very quickly, and that a patient may not remember the treatment goal when asked this.'' R.D. 41 n.80. Indeed, after admitting that ''that part would be very quick in my office,'' Respondent added that ''I wouldn't ask him what he was actually doing to achieve that.'' Tr. 393. He also testified that he was not sure as to why, when the question was ''has patient achieved treatment objective'' and was, in essence, a yes or no question, and the patient may not even remember what his treatment objective was, B.B. would have answered ''fair.'' *Id.* at 395. Given that Respondent offered no further testimony as to other questions he asked B.B. to ascertain how the pain was effecting his ability to function in various aspects of his life activities, nor maintained that he asked any other questions about B.B.'s pain level, I give weight to Dr. Owen's testimony that Respondent's evaluation of B.B.'s pain and ability to function was superficial.

Although Respondent maintained that he did a full physical exam, once again he found that B.B.'s straight leg raise was negative. As Dr. Owen testified, without a positive finding on this test, Respondent did not have a diagnosis for lumbar disc disease. And as for the Respondent's testimony that ''the MRI results were not back yet,'' B.B. had not even gone for the MRI as of this date.

Nor do I find persuasive the reasoning that Respondent's treatment of B.B.'s upper respiratory ailment was ''more consistent'' with the treatment provided by ''a conscientious practitioner than a pill mill operator.'' R.D. 43. Putting aside that there is no evidence as to how a conscientious practitioner would treat a patient who complains of a potential upper respiratory ailment, even patients who engage in the abuse or diversion of controlled substances may seek treatment for legitimate health conditions. So too, a physician may nonetheless divert controlled substances to some patients without being a pill mill operator. Thus, even assuming that Respondent properly evaluated and treated B.B. for this condition, this has no bearing on whether he properly evaluated B.B. to determine whether he had a legitimate pain condition which warranted the prescription of controlled substances.[42]

In sum, because I agree with Dr. Owen that Respondent still had not established medical necessity for the prescriptions and had still failed to address the two aberrant drug tests, I conclude that the prescriptions lacked a legitimate medical purpose and that Respondent acted outside of the usual course of professional practice in issuing them. 21 CFR 1306.04(a).

The October 20 Prescriptions

At this visit, Respondent noted that B.B. reported that ''his stress [was] up'' and that he had ''lo[st] his father'' and was ''having a lot of grief.'' GX 3, at 46. He made similar physical exam findings as at the previous visit, again noting that B.B.'s straight leg raise was negative but that ''lying down and sitting up cause him a lot of pain.'' *Id.; see also* Tr. 305 (Respondent's testimony that B.B.'s ''exam was still exactly like before, with low back paraspinal and spinal tenderness, but he still had the negative straight leg raises. But lying down and sitting up still caused him a lot of pain.''). Respondent did not even obtain a numerical pain rating at this visit nor note whether B.B. was achieving his treatment objective. Respondent diagnosed B.B. as having both acute grief and lumbar disc disease.

Dr. Owen testified that B.B.'s having a lot of stress and grief would magnify B.B.'s ''perception of pain and disability.'' Tr. 139. He further explained that because of B.B.'s previous aberrant behaviors and the new stressors in B.B.'s life, he was at increased risk to ''use [the] drugs to chemically cope'' and that Respondent should have ''sought psychological counselling for'' him but did not do so. *Id.*

Dr. Owen also took issue with Respondent's notation in the visit note that he suggested nonmedicinal modalities for two reasons. *Id.* at 209–10. First, he explained that ''good medicine would be [that] if you haven't done nonmedicinal pain-relieving modalities,'' Respondent should have ''wean[ed] [B.B.] off these controlled substances and tr[ied] these other treatments first.'' *Id.* at 210. Second, he explained that the note did not provide an adequate level of detail such that any person who took over B.B.'s care or was asked to provide a consultation would be able to ''understand what was happening with this patient at that point.'' *Id.*

As for Respondent's notations that the straight leg raise test was negative but that lying down and sitting up caused B.B. a lot of pain, Dr. Owen testified that these were not objective findings in a neurological sense in that B.B. could not ''have a radiculopathy'' absent a positive straight leg raise test. *Id.* at 210–11. As for the pain that B.B. had lying down and sitting up, Dr. Owen testified that this contributed to the idea that the controlled substances did not provide a therapeutic benefit and thus did not warrant the continued prescribing of controlled substances. *Id.* at 210.

The CALJ declined to give weight to much of Dr. Owen's testimony, reasoning that his ''view of the level of documentation detail required in Oklahoma, as well as his description of

[42] To be sure, the visit note also stated that B.B. had ''a left abdominal wall hernia'' and Respondent recommended that he ''wear a corset if at all possible.'' GX 3, at 47. While Respondent testified that he suggested the use of a corset because he didn't want B.B. to confuse his abdominal pain with his level of pain because of his having changed B.B.'s pain regimen, here again, there is no evidence that he evaluated the cause of the hernia, how much pain it was generating, and how it was effecting B.B.'s ability to function. Tr. 300.

Notably, B.B. returned for another office visit only two weeks later. GX 3, at 46. Yet the note for the visit contains no mention of the hernia. *Id.* Nor is the hernia mentioned in the visit notes for B.B.'s later visits. *See id.* at 42, 44–45. And in his testimony, Respondent offered no explanation as to what happened to B.B's hernia such that it was no longer mentioned in subsequent visit notes.

a mandatory mental health referral requirement, is [sic] not consonant with the requirement of the Oklahoma Pain Management Regulations.'' R.D. 46. With respect to Respondent's recordkeeping, the CALJ explained that ''[t]here was sufficient detail to support the proposition that the office visit that was conducted in conjunction with this prescribing event *presented efforts on the part of the Respondent to treat B.B.*'' *Id.* (emphasis added). However, as he did with the October 6 prescriptions, the CALJ found that the August 25 UDS was not anomalous (based on Respondent's uncorroborated hearsay testimony) but nonetheless found that the June 1 UDS was aberrant and that ''Respondent's continued controlled substance prescribing under these circumstances . . . fell outside the course of a professional medical practice, and fell short of his obligations as a DEA registrant to safeguard against diversion.'' *Id.*

I do not read Dr. Owen's testimony as categorically stating that the Oklahoma regulation imposes a mandatory requirement of obtaining a consultation when a patient presents with a co-morbid psychiatric disorder. While Dr. Owen testified that one of the provisions in Oklahoma's ''policies and guidelines . . . that stood out is if somebody's a complex pain patient with psychological or psychiatric comorbidities, they should get consultations with a pain management physician with expertise in these complex cases,'' Tr. 101, he acknowledged that the Board's rule used the words ''may require'' but that a physician ''should document why [he] deviate[s] from that recommendation.'' *Id.* at 186.

Thus, Dr. Owen's testimony is not fairly read as asserting that Oklahoma imposes a mandatory requirement of obtaining a consultation in all instances in which a patient presents with a comorbid psychiatric disorder. Moreover, even if I agreed with the CALJ's characterization of Dr. Owen's testimony on this issue, the Board's standard is nonetheless evidence that the standard of care may require referral or consultation depending on the circumstances presented by the patient, and there is ample evidence to support Dr. Owen's conclusion that Respondent breached the standard of care when he failed to even consult with B.B.'s mental health providers.

Dr. Owen testified that patients who present with comorbid psychiatric conditions present a heightened risk of abusing controlled substances because these conditions may magnify a patient's perception of pain and disability and aggravate a patient's experience of suffering, *id.* 102–04, and Respondent agreed with Dr. Owen. *Id.* at 409 (Respondent's testimony that ''having chronic pain [can] lead to worse anxiety and depression'' and that ''uncontrolled anxiety or depression [can] lead[] to more pain.''). And throughout his testimony, Dr. Owen repeatedly noted that based on B.B.'s aberrant behavior alone, Respondent should have obtained consultations with mental health providers or addictionologists to obtain a more thorough assessment of B.B.'s behavior. Thus, Dr. Owen opined that Respondent should have sought psychological counselling for B.B. based on his presentation of suffering from greater stress and acute grief at this visit. *Id.* at 139.

To be sure, the evidence shows that B.B. was already seeing a mental health professional during this period. However, Respondent admitted that he never even consulted with the mental health professionals who were simultaneously prescribing controlled substances to B.B., whether in response to B.B.'s report of increased stress and grief at this visit, or at any point during the course of his prescribing to B.B. *Id.* at 408. Notably, when Respondent was asked if it was within the standard of care for him and B.B.'s mental health provider to keep treating B.B. ''without talking to each other,'' Respondent explained that ''the mental health providers are very good about speaking to us about patients.'' *Id.* at 409. When then asked if he would ordinarily consult with a patient's mental health provider if the latter is simultaneously prescribing controlled substances, Respondent offered the unresponsive answer that ''[w]e've become quite reliant on the PMP [reports] now'' and that ''[b]efore the PMP, there was quite a bit of cross-talk, because . . . pharmacists would call'' and tell him that a patient was seeing another physician. *Id.* at 409–10. However, the PMP reports in the record show that they did not contain any medical information for B.B. other than the controlled substance prescriptions he obtained and filled and the names of the prescribers.

When then asked if two practitioners who are simultaneously prescribing controlled substances to the same patient wouldn't ''talk to each other about'' their joint prescribing, Respondent initially answered ''absolutely.'' *Id.* at 410. However, notwithstanding his earlier testimony that ''[t]he mental health providers are very good about speaking to us about patients,'' he then asserted that ''[i]n every other field but mental health we do do that,'' and added that consulting with his patient's mental health professionals ''doesn't happen very often.'' *Id.* In short, none of this testimony refutes Dr. Owen's testimony that a patient with a comorbid psychiatric disorder is at a higher risk of abusing controlled substances to cope, that consultations are important to obtain a better understanding of such a patient's behavior, and that based on the aberrant drug screens and his report of acute grief, Respondent should have consulted with either B.B.'s mental health providers or an addictionologist.

While, when considered in isolation, Respondent's failure to consult with B.B.'s mental health providers would not establish a violation of 21 CFR 1306.04(a), Dr. Owen again explained that Respondent's evaluation was ''inadequate'' and did not support a finding of medical necessity to continue prescribing controlled substances. *Id.* at 140. Moreover, while Respondent testified that lying down and sitting up caused B.B. a lot of pain, B.B. had been on controlled substances for more than two and a half years at this point and was receiving prescriptions for even more potent narcotics and in larger doses (morphine and oxymorphone, both schedule II drugs) and yet he had never been referred for physical therapy. Thus, as Dr. Owen explained, Respondent's findings that B.B. was having a lot of pain lying down and sitting up supported the finding that prescribing controlled substances was not providing a therapeutic benefit. *Id.* at 211.

As before, Respondent's failure to address the aberrant drug screens as well as Dr. Owen's testimony that the evaluation was inadequate, that prescribing controlled substances did not provide a therapeutic benefit, and that Respondent did not establish medical necessity to continue prescribing controlled substances, are sufficient to support a finding that Respondent violated 21 CFR 1306.04(a). Respondent's failure to consult with B.B.'s mental health providers given B.B.'s report of increased stress and grief provides additional support for this conclusion.

The November 18 and December 15, 2011 Prescriptions

On both dates, Respondent issued B.B. prescriptions for 90 Morphine Sulfate ER 15 mg and 120 Opana 10 mg without requiring that B.B. appear for an office visit with him. Dr. Owen again found that Respondent should have seen B.B. prior to issuing the prescriptions and that Respondent still

had not established medical necessity to continue to prescribe controlled substances. Tr. 142. Dr. Owen also noted that Respondent still had not addressed the aberrant drug screens. *Id.* at 143. He further observed that notwithstanding B.B.'s report of increased stress and grief at the previous visit and that B.B. presented a high risk of escalating his medications and abusing them, Respondent obviously did not discuss these issues with B.B. *Id.*

Dr. Owen acknowledged that under a DEA regulation (21 CFR 1306.12(b)), a practitioner may issue multiple prescriptions for a schedule II drug to provide up to a 90-day supply of the drug based on only seeing the patient once every 90 days. However, Dr. Owen explained that a physician who does so must have ''established medical necessity and legitimate therapeutic benefit . . . and [that] a patient doesn't have a high risk of abuse,'' but that B.B. already had provided two aberrant drug screens before Respondent issued the prescriptions. *Id.* at 196.

In refutation, Respondent offered only that after the October 20 visit, he ''felt like [B.B.] could really go into the three-month'' and that he did not understand that he had to see B.B. ''every 30 days.'' *Id.* at 307. Respondent further asserted that when a patient requested a new schedule II prescription, a PMP report would be obtained, the patient's file would be pulled, and that he would write the prescription and leave it ''up front.'' *Id.* at 308. Respondent did not offer any testimony refuting Dr. Owen's testimony that B.B. presented a high risk of escalating the use of controlled substances and should have been seen prior to the issuance of the prescriptions on both dates.

The CALJ found the allegations ''not sustained'' with respect to both the November 18 and December 15 prescriptions. R.D. at 51. In the CALJ's view, although the June 1 UDS was aberrant, it was not adequately noticed with respect to these two prescribing events, and as for the August 25 UDS, ''the record evidence [did] not support a finding that the . . . results [were] aberrant.'' *Id.* The CALJ again rejected Dr. Owen's testimony as to the lack of therapeutic benefit and medical necessity, on the ground that Dr. Owen's view as to the required level of documentation ''is at odds with the requirements of the Oklahoma Pain Management Regulations.'' *Id.* at 48. And finally, the CALJ rejected Dr. Owen's testimony regarding Respondent's failure to require an office visit, reasoning that DEA's regulation allows for the issuance of multiple prescriptions for up to a 90-day supply of a schedule II drug and that Dr. Owen's opinion was ''based on his assumptions that the chart contains insufficient documentation detail and two aberrant UDS lab results.'' *Id.*

I find, however that on both dates, Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose in issuing the morphine and Opana prescriptions without requiring an office visit. As previously explained, the Show Cause Order provided Respondent with fair notice that the aberrant June 1 drug test would be at issue throughout this proceeding, including with respect to the prescriptions he issued on November 18 and December 15, 2011. *See supra* discussion at 72–77. With respect to the August 25 drug test, the CALJ's reasoning makes clear that he considered Respondent's testimony as to what he was told by the lab to prove the truth of the matter asserted. As explained previously, his testimony is uncorroborated hearsay and thus unreliable. Moreover, Respondent's testimony that he did not consider the positive test results for the other benzodiazepines including the temazepam positive to be aberrant is amply refuted by his testimony regarding the January 19, 2012, which he deemed aberrant.

So too, for reasons explained previously, I reject the CALJ's interpretation of the documentation requirements imposed by the Oklahoma regulations. In any event, in his testimony regarding his evaluation of B.B., Respondent simply read aloud what he had documented in the visit notes and in the Treatment Objective Evaluation section of the Treatment Plan (GX 3, at 28) and never identified additional measures he took to evaluate B.B.'s pain and how it affected his ability to function.[43] Thus, I give weight to Dr. Owen's testimony that Respondent did not establish medical necessity to continue to prescribe controlled substances.

As for the CALJ's reliance on the regulation which allows a practitioner to issue to a patient multiple schedule II prescriptions for up to a 90-day supply at one time, provided the practitioner meets certain conditions, the rationale underlying this provision does not provide a safe harbor to Respondent.[44] Of relevance here, these conditions include, *inter alia,* that: ''[e]ach separate prescription is issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice''; and ''[t]he individual practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse.'' 21 CFR 1306.12(b)(i) and (iii). As found above, based on my conclusions that the prescriptions Respondent issued at the three previous office visits were issued outside of the usual course of professional practice and lacked a legitimate medical purpose, Respondent did not meet the first condition. Moreover, based on Respondent's testimony that he did not remember whether he reviewed either the June 1 or August 25 drug test results, that he doubted that he did and ''wouldn't expect [him]self to'' have done so even though he knew his partner had instituted drug testing of the clinic's chronic pain patients (Tr. 283, 397), Respondent failed to determine whether issuing the prescriptions created an undue risk of diversion. Thus, the rationale underlying this regulation provides no basis to reject Dr. Owen's testimony that these prescriptions were issued outside of the usual course of professional practice and lacked a legitimate medical purpose. 21 CFR 1306.04(a).

The January 19, 2012 Prescriptions

On January 19, 2012, B.B. again saw Respondent. B.B. reported that he had gone to the emergency room ''two weeks ago with right leg swelling'' but that ''[h]is ultrasound was negative''; he complained of ''some calf pain'' and that ''[h]e still feels very tight.'' GX 3, at 45. Respondent also noted that B.B. ''goes to a psychiatrist'' and ''reports severe lumbar disc disease.'' *Id.* In addition, Respondent documented that B.B. reported that ''he ha[d] been exposed to someone with HPV'' and ''would like an exam.'' *Id.* Respondent further noted that B.B.'s ''[p]ast medical history [was] extensively reviewed'' and ''placed in chart.'' *Id.*

[43] While Respondent had received the MRI results before he issued the November prescriptions, GX 3, at 20; Dr. Owen testified that the MRI ''did not show any specific problems that would be attributable for this kind of pain complaint[], nor was it significant to cause the perceived disability that this 26-year-old gentleman considers himself'' to have. Tr. 207. At no point in his testimony did Respondent refute Dr. Owen's review of the MRI results.

[44] As this provision contemplates the issuance of multiple prescriptions at one time provided the prescriptions ''indicat[e] the earliest date on which a pharmacy may fill each prescription,'' it is not directly applicable here. However, as to the frequency of office visits, the regulation states that a physician ''must determine . . . based on sound medical judgment, and in accordance with established medical standards, whether it is appropriate to issue multiple prescriptions and how often to see their patients when doing so.'' 21 CFR 1306.12(b)(2).

According to Respondent's exam notes, B.B. was ''[a]lert and oriented and in no apparent distress.'' *Id.* While other portions of the exam were normal, Respondent again documented that B.B. had ''[l]ow back paraspinal tenderness,'' a ''[n]egative straight leg raise,'' and ''[n]euro intact.'' *Id.* He also documented that B.B. ''has very tight right calf.'' *Id.* However, no mention was made of B.B.'s hernia which had been noted at previous visits. *Id.*

Respondent diagnosed B.B. with ''lumbar disc disease,'' ''exposure to infectious disease,'' and ''[r]ight calf pain.'' *Id.* He further documented that he discussed the ''[a]ddictive dependence, and tolerance nature of the medicines as well as alternatives,'' that he suggested ''[n]on-medicinal pain-relieving modalities,'' and that the ''[f]ollowup will be [in] three months.'' *Id.* Respondent then issued B.B. new prescriptions for Morphine Sulfate ER 15 mg and Opana 10 mg with the same dosing instructions, thus providing a 30-day supply for each drug if taken as directed. *Id.*

Dr. Owen testified that when a patient reports having gone to the emergency room, he would get the record to find out both ''what the problem was'' as well as if ''any additional medication [was] prescribed.'' Tr. 147. B.B.'s file does not, however, contain a note from the emergency room. *Id.; see also* GX 3. Moreover, after observing that the visit note contains no mention that Respondent addressed either of the two prior urine screens during this visit, Dr. Owen again testified that Respondent had failed to establish medical necessity for the prescriptions ''by doing a proper history and physical exam, by defining a therapeutic benefit, by explaining what previous treatments have or have not worked . . . and . . . addressing the previous aberrant urine drug tests.'' *Id.* at 148. Thus, Dr. Owen opined that the Respondent acted outside of the usual course of professional practice in issuing the prescriptions and that the prescriptions lacked a legitimate medical purpose. *Id.*

In refutation of Dr. Owen's testimony, Respondent asserted that B.B. did not report anything other than his calf pain and his new conditions (apparently a reference to his exposure to someone with HPV). *Id.* at 314, 317. He further testified that there was nothing in the PMP report that showed that B.B. had been prescribed anything during his emergency room visit. *Id.* at 314. He also acknowledged that during the physical exam, he again found that B.B. had a negative straight leg raise test and thus did not have radiculopathy but that this did not mean that B.B. did not have paraspinal or muscular skeletal pain. *Id.* at 318–19. However, in contrast to the last visit where Respondent documented that lying down and sitting up was causing B.B. a lot of pain, Respondent made no such note in the visit note. GX 3, at 45.

While Respondent agreed that his visit notes were unremarkable given the high amount of narcotics he was prescribing and asserted he could have done a better job dictating his notes (which he attributed to seeing 40 to 45 patients a day and dictating the notes), he maintained that because B.B. ''just continued to have the same pain that he had before . . . I didn't go into details on it.'' Tr. 315. However, notwithstanding that he had not seen B.B. in three months, he did not document whether B.B. had achieved his treatment objective nor document a numeric pain rating. GX 3, at 28.

The CALJ rejected the Government's contention that the controlled substance prescriptions Respondent issued at this visit violated 21 CFR 1306.04(a). Again, the CALJ concluded that the Government did not provide adequate notice regarding its reliance on the June 1 UDS and that the record does not support a finding that the August 25 UDS result was aberrant. R.D. at 51. And again, the CALJ reasoned that Dr. Owen's view of the level of documentation required findings of therapeutic benefit and medical necessity, as well as his conclusion that Respondent did not adequately document B.B.'s visit to the emergency room and should have obtained the record of that visit, were ''at odds with the requirements of the'' Board's rules. *Id.* Finally, the CALJ asserted that ''Respondent's testimony provide[s] convincing evidence that the Respondent was engaged in *bona fide* attempts to treat B.B., not act as a drug supplier. The same can be said of the evidence that the Respondent was seeing B.B. for maladies beyond his pain complaints.'' *Id.*

For reasons explained previously, I find that Respondent was provided adequate notice regarding the Government's reliance on the June 1 UDS and that the record supports a finding that the August 25 UDS was aberrant. As also explained previously, because I do not agree with the conclusion that Dr. Owen's understanding of the Oklahoma documentation requirement is ''at odds'' with the permissive nature of the State's regulations, R.D. 51, and agree with the CALJ's conclusion that Dr. Owen's testimony ''predictably raised no issues regarding credibility,'' I give weight to Dr. Owen's testimony that Respondent did not establish medical necessity to issue the prescriptions.

As for Dr. Owen's criticism of Respondent for failing to obtain the emergency room record, Respondent testified that he checked the PMP and found no evidence that B.B. had been prescribed controlled substances. Moreover, even if the standard of care does require a pain management physician to obtain an ER record for his patient, it not clear how quickly that record could have been obtained on the date of this visit. Nor is it clear why, if a physician has otherwise properly evaluated his patient, his failure to obtain an ER record on that date would preclude his issuance of controlled substance prescriptions.

However, Dr. Owen provided credible testimony that when Respondent issued the January 19 prescriptions, he still did not perform an adequate evaluation of B.B.'s pain complaint by doing a proper history and physical exam, nor determined whether there was a therapeutic benefit to justify the continued prescribing of controlled substances, nor addressed the previous aberrant drugs tests. Dr. Owen's testimony provides substantial evidence to conclude that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose when he issued the prescriptions.

In discussing Respondent's testimony regarding the notes he made after B.B.'s January 27 office visit (on which occasion he did not prescribe controlled substances), the CALJ stated that ''Respondent noted that B.B. was on Social Security disability, and objective data had confirmed that he had chronic pain.'' R.D. at 50 (citing Tr. 324). However, Respondent did not identify what the ''objective data'' were. *See* Tr. 324–25.

The CALJ also found that in the Respondent's view, B.B. had not behaved in a way that set off alarms, and was stable on his medications.'' R.D. at 50. However, as found previously, Respondent testified that he probably never even looked at the UDS results that were in B.B.'s chart and didn't expect that he would have done so. Yet Respondent also testified that Dr. Schoelen had instituted urine drug testing for the clinic's chronic pain patients and thus Respondent obviously knew that B.B.'s file likely contained UDS results. And the evidence also shows that Respondent did not conduct a drug test of B.B. at any of his first three visits and yet concluded that he only needed to see B.B. once every three months. Thus, to the extent Respondent claims that B.B's behavior did not set off

alarm bells, it is because Respondent deliberately ignored relevant evidence and failed to monitor his patient.

The CALJ apparently also credited Respondent's testimony to the effect that ''[m]uch more went on in the office than what's written'' in the visit notes and that he ''definitely knew what was going on in [B.B's] life from each visit, and I just failed to dictate that.'' Tr. 326. And the CALJ further asserted that ''Respondent provided details to demonstrate that he knew his patient,'' R.D. 50, and apparently credited Respondent's testimony that he ''was talking to [B.B] about those things and what all he did in a day, and he was not able to work.'' Tr. 327 (cited at R.D. 51).

Yet, on the occasion of the January 19 visit, during which he issued B.B. new prescriptions for morphine and oxymorphone, Respondent did not even document in the Treatment Objective Evaluation section on the Treatment Plan if B.B. was meeting his treatment objectives and did not obtain a pain rating. Of note, the former was typically documented with a handwritten one-word answer of either ''yes'' or ''fair,'' and the latter was documented with a handwritten notation of a number; thus neither of these inquiries required dictation at all.[45]

Moreover, when asked by the CALJ how he knew how the meds he prescribed ''were doing,'' Respondent replied that his evaluation was ''purely subjective, and if they were needing more or less pain meds.'' Only after a further question as to whether he asked objective questions in assessing how B.B. was responding to the medications did Respondent maintain that he was aware of what B.B. did all day and that he had not returned to work.

Dr. Owen provided unrefuted testimony that ''return[ing] to work'' is ''the gold standard for functionality in pain management.'' Tr. 100. Given this, it is telling that Respondent never documented whether B.B. had returned to work in the progress notes he prepared for the various visits. Moreover, given that B.B.'s treatment objective was to return to work without pain and yet B.B. never returned to work during the course of Respondent's prescribing to him, *id.* at 353, it is hard to understand why Respondent wrote ''fair'' for whether B.B. was meeting his treatment objective.

As for why he did so, Respondent testified that he would ask his patients if they were meeting their treatment objective and he would write down what the patient told him. Tr. 392. However, Respondent further testified that ''[a]ctually that part [of the visit] would be very quick in my office. I wouldn't ask him what he was actually doing to achieve that.'' *Id.* at 393.

Respondent ''absolutely'' agreed with the CALJ that he would ask his patients ''[h]ave you achieved your treatment objective?'' only to then acknowledge that his patients ''may not'' remember what their treatment objective was. Tr. 394. And while this question appears to have been directed at assessing a patient's function, Respondent testified that the question was intended to elicit ''[b]asically if they were satisfied with the care or the standard that they meet.'' *Id.* When then asked why B.B. would answer ''fair'' to what seemed to be ''a yes or no question,'' Respondent testified that he was ''not sure'' why the answer would come out as ''fair.'' *Id.* at 395.

Tellingly, at another point during his testimony on this issue, Respondent explained:

> They [the patients] were very well trained by the time this was here. Whenever we walked in, they knew the questions before we asked them. You know, are you meeting your objective? What's your pain level? And do you wish to change? Do you think we should make a referral? We asked it every time, just like clockwork.

Tr. 394–95.

I disagree with the CALJ that ''Respondent's testimony provides convincing evidence that he was engaged in *bona fide* attempts to treat B.B., not act as a drug supplier.'' On the issue of how he evaluated B.B.'s function, Respondent offered only the vague testimony that he ''was talking to B.B about those things and what all he did in a day.'' Yet Respondent never documented any such findings other than to make the nonsensical notation of ''fair'' for whether B.B. was achieving his treatment objective, and even at the hearing, Respondent still could not explain why he did so even though he did so on multiple occasions. As for his assessment of B.B.'s pain level, Respondent testified to only asking ''what's your pain level''—as if over the course of the preceding 90-day period, a patient's pain level would not fluctuate depending upon the activities engaged in by the patient. While I am mindful that the CALJ's finding was based on his credibility determination, it is noteworthy that in his decision, the CALJ did not discuss this portion of Respondent's testimony (Tr. 392–95), which is clearly relevant and probative on the issue of the scope of his evaluation of B.B.[46]

As noted previously, in its Policy Statement, the Board stated that it ''will judge the validity of the physician's treatment of the patient *based on available documentation*'' and that ''[t]he goal is to control the patient's pain while effectively addressing other aspects of the patient's functioning, including physical, psychological, social and work-related factors.'' Policy Statement, at 2 (emphasis added). Given that Respondent's documentation was confined to the two superficial notations in the Treatment Objective Evaluation section of the Treatment Plan and given the emphasis which the Board's Policy Statement places on the available documentation in judging the validity of treatment, as well as Respondent's testimony as to the scope of the questions he would ask, I conclude that Respondent has not refuted Dr. Owen's testimony that he failed to adequately evaluate whether there was a medical necessity to prescribe controlled substances to B.B.

In concluding so, I am mindful that while the Board initially charged Respondent with ''fail[ing] to maintain adequate medical records to support diagnosis . . . treatment or prescribed medications, in violation of 59 O.S. § 509(20),'' RX 1, at 4, the Board ultimately entered into a settlement with him prior to hearing which did not include a finding that he violated this provision. There is, however, nothing unusual about prosecutors agreeing to enter settlement agreements in which they waive meritorious allegations and, as the voluntary settlement agreement offers no explanation as to why the Board did not rely on this specific allegation, I place no weight on the failure of the Board to find that Respondent violated the provision.

I am also mindful of the CALJ's criticism that Dr. Owen is not licensed to practice in Oklahoma and has never practiced there, as well as that Dr. Owen's ''representation that the controlled substance prescribing standards in his home state of Texas are similar to, but less restrictive than Oklahoma, is flat out wrong,'' and that this diminishes the weight to be given to his testimony. R.D. 89 (citing Tr. 87, 94, 105–06).

[45] Indeed, on each of the dates on which Respondent made notations in this section of the chart, each of the entries was handwritten.

[46] While Respondent also asserted that B.B. ''basically was stuck in the house all day,'' that obviously was not the case when B.B. was found semiconscious and in an apparent state of intoxication in a vehicle parked on the median strip of I–35. As far as B.B.'s inability to work, the evidence shows that he was working by ''illegally buying and selling prescriptions drugs.'' RX 3, at 3 (stipulated findings of fact of the March 8, 2013 Board Order).

It is true that in several respects the Texas Board's standards are more restrictive than Oklahoma's, and thus, Dr. Owen's testimony that Texas's standards are less restrictive was erroneous. However, on the critical issues of the scope of the evaluation of the patient and the documentation required, as explained previously, I conclude that the Oklahoma Board's standards on these issues are mandatory. While the Texas Board uses even more emphatic language to express the mandatory nature of these requirements, I conclude that there is no material difference between the standards of Oklahoma and Texas.

Moreover, Dr. Owen provided additional evidence to support the view that the standards of medical practice require the documentation of considerably more information than found in B.B.'s progress notes. As he explained:

> the purpose of documentation is for continuity of care. Not only continuity of care for this same provider from visit to visit but continuity of care should somebody else assume the care later on down the road or should you need to get a consultation, that the consultant can read your notes and understand what was happening with this patient at this point in time.

Tr. 210.

Notably, Respondent put on no evidence showing that Oklahoma's standard was materially different than what Dr. Owen testified to on the issue of the adequacy of the evaluation and required level of documentation. *See United States* v. *Joseph,* 709 F.3d 1082, 1096 (11th Cir. 2013) (upholding criminal conviction for violation 21 CFR 1306.04(a); ''[e]ven if the district court should have instructed the jury to evaluate the conduct of the defendants against only a Georgia standard of medical practice, the defendants failed to offer any proof that the Georgia standard differs at all from any national standard that the jury purportedly considered'').

Moreover, while States have the primary responsibility for the regulation of the medical profession, many of the profession's norms were created by the profession itself. Thus, on such issues as the adequacy of a clinical evaluation for a particular pain complaint and the necessary documentation to support the prescribing of controlled substances, the standard of medical practice would not seem to vary to any material degree between States, especially between States that border each other.

Finally, unlike Respondent, Dr. Owen is board certified in pain management, is a member of multiple pain management professional organizations, including the American Academy of Pain Medicine and the American Academy of Pain Management, has practiced pain management for more than sixteen years, serves as a peer reviewer on pain medicine for the Journal of the American Academy of Pain Medicine, and has made numerous presentations on pain-management. In light of his extensive professional credentials, I conclude that even though he has not practiced in Oklahoma, I find persuasive his testimony as to the inadequacy of Respondent's evaluations of B.B. and Respondent's failure to establish a medical necessity for the prescriptions. I thus conclude that the January 19, 2012 Morphine and Opana prescriptions lacked a legitimate medical purpose and that Respondent acted outside of the usual course of professional practice in issuing them. 21 CFR 1306.04(a).

The February 13, 2013 Prescriptions

On this date, Respondent issued B.B. new prescriptions for 120 Opana 10 and 90 Morphine Sulfate ER 15. Moreover, by this date, Respondent likely had the results of the January 19 UDS, which showed that Morphine Sulfate was not detected and that B.B. had tested positive for nordiazepam, oxazepam and temazepam (as well as alprazolam). On the lab report, Respondent wrote that B.B. was ''counsel[led] to only take what is prescribed.'' Respondent did not require that B.B. appear for an office visit.

Dr. Owen testified that Respondent should have required an office visit because of B.B.'s previous aberrant drug-taking behaviors and because Respondent still needed to establish that there was a medical necessity to prescribe controlled substances and a therapeutic benefit. Tr. 154. While Dr. Owen acknowledged Respondent's notation that he had counseled B.B., Dr. Owen testified that this was not an adequate safeguard to prevent abuse or diversion because this was B.B.'s third aberrant drug test. *Id.* Dr. Owen further testified that Respondent ''need[ed] to have a long discussion with [B.B.] about the risk of addiction'' and obtain a consultation by a specialist in addiction.

In refutation, Respondent maintained that ''the morphine said not detected, but the oxymorphone was positive, so that was explainable.'' *Id.* at 335. And he again maintained that ''the lab always said that if ''the Xanax was positive,'' then nordiazepam, oxazepam and Xanax ''could all three be positive.'' *Id.* Continuing, Respondent testified that ''temazepam, in our practice, usually didn't show up,'' so he checked B.B.'s PMP report to see if he had been prescribed Restoril (the name of the legend drug) but ''couldn't find it on the PMP.'' *Id.* Respondent then maintained that ''Dr. Schoelen didn't mind his pain patient being on Restoril,'' but ''I did, and so I wanted to make sure, has he been prescribed Restoril.'' *Id.* at 335–36. Respondent then testified that he was ''sure'' that he told B.B. that if he had ''an old Restoril or some other doctor, I do consider that breaking our rules, and so you can't take it.'' *Id.* at 336.

The CALJ again rejected the Government's contention that Respondent violated 21 CFR 1306.04(a) when he issued the prescriptions, reasoning that ''the record evidence does not support a finding that the August 25 or January 19 UDS results are aberrant.'' R.D. at 54. While the CALJ again explained that ''it is beyond argument that the June 1 UDS does present an anomaly, reliance on that event [was] not adequately notice by the Government in support'' of its contentions regarding these prescriptions. *Id.*

In addition, the CALJ found that Respondent ''provided a thoughtful and reasoned explanation (based on his professional experience and knowledge of operating Tri-City) of why B.B. may have tested positive for temazepam despite not having been prescribed it.'' *Id.* at 54–55. Taking the January 19 UDS in isolation, the CALJ explained that the Government did not ''establish that the Respondent's counseling B.B. to 'only take what is prescribed' fell below the standard of care in Oklahoma.'' *Id.* at 55. The CALJ then rejected Dr. Owen's testimony that Respondent should have referred B.B. to an addictionologist, explaining that ''the existence of the UDS reports that are unavailable to the Government and/or unsupported by the evidence were integral to that recommendation, and their absence from a useful role in the record likewise undermines his testimony in this regards [sic].'' *Id.*

However, as explained above, even though the June 1 UDS was not specifically referenced in the Show Cause Order with respect to the February 13 prescriptions, the issues of the aberrant nature of the June 1 test (as well as the August 25 test) were litigated by consent. As for the CALJ's assertion that the record does not support a finding that the August 25 and January 19 UDS results were aberrant, Respondent's testimony and the notation he placed on the report of the January 19 test establish that both tests were aberrant in that B.B. was taking a medication which Respondent had not prescribed to him and which was not listed on the PMP reports, including one

that went back as far as August 27, 2010. Moreover, none of Dr. Schoelen's progress notes ever mentioned that B.B. was taking Restoril or temazepam, whether prescribed by Dr. Schoelen or another authorized prescriber. And while the CALJ noted that Respondent provided a thoughtful and reasoned explanation as to ''why B.B. *may have tested positive for temazepam,*'' the fact of the matter is that in his testimony, Respondent never maintained that he even asked B.B. if he had an old prescription for the drug and who prescribed it to him. Thus, B.B. may have tested positive for the drug because he was obtaining it without a prescription.

As for the CALJ's assertion that the Government provided no evidence that Respondent's action in counseling B.B. to take only what he was prescribed fell below the standard of care, the CALJ's reasoning rests on the erroneous premise that this was B.B.'s first aberrant drug test. However, for reasons explained previously, it was his third aberrant test in less than eight months, and each of his last three tests produced an aberrational result.[47]

In rejecting Dr. Owen's testimony that Respondent needed to obtain a consultation, the CALJ further asserted that Oklahoma's referral standard (which uses the language ''may require'') is ''permissive'' and not ''directive.'' R.D. at 55. The provision is, however, more appropriately read as conferring a degree of discretion which must be exercised within the bounds of ''sound clinical judgment,'' *Policy Statement,* at 2; and which is necessarily dependent on the facts and circumstances presented by the patient.

Thus, in contrast to the CALJ, I give weight to Dr. Owen's testimony that based on B.B.'s multiple aberrational tests, Respondent needed to obtain a consultation with a specialist in addiction. Moreover, as Respondent did not require an office visit, I also give weight to Dr. Owen's testimony that Respondent had still not established medical necessity to justify the continued prescribing of controlled substances. Accordingly, I conclude that the Opana and Morphine prescriptions lacked a legitimate medical purpose and that Respondent acted outside of the usual course of professional practice in issuing them. 21 CFR 1306.04(a).

The March 13, 2012 Prescriptions

On March 13, 2012, Respondent issued B.B. new prescriptions for both 120 Opana 10 and 90 Morphine Sulfate ER 15. *See* GX 5, at 10, 24. Respondent issued the prescriptions without requiring an office visit by B.B. Tr. 156; *see generally* GX 3, at 42–62 (visit notes for B.B.). Nor is there any notation on any of the visit notes regarding Respondent's issuance of these prescriptions.[48]

Dr. Owen testified that Respondent should have required an office visit before issuing these prescriptions, reiterating that Respondent still had not established ''medical necessity for'' prescribing controlled substances to B.B. Tr. 155. Asked to again identify the deficiencies which led him to conclude that Respondent had not established medical necessity, Dr. Owen explained:

> Reviewing all the pertinent previous medical records, including what previous treatments have been performed, an adequate history and physical exam, consultations as medically appropriate, establishing a clinically meaningful and objective therapeutic benefit, and addressing any aberrant drug-taking behaviors.

Id. at 157. Dr. Owen again noted that there were three previous incidents of aberrant drug-taking behaviors, and that ''[t]he only treatment plan has been continuing the controlled substances without medical necessity.'' *Id.* at 158. And once again, Dr. Owen testified that the prescriptions lacked a legitimate medical purpose and ''were not'' issued in the usual course of professional practice. *Id.*

In his direct testimony, Respondent did not address his reasons for issuing the March 13 Opana and morphine prescriptions. *See* Tr. at 338–39. Instead, the questioning centered on the issue of why he wrote a prescription on March 14 for Nexium, ''a stomach medicine'' and a non-controlled drug (''I have no idea'') after which the questioning moved on to the next set of prescriptions. *Id.*

Here again, the CALJ concluded that the Government's evidence was not sufficient to sustain the allegations that Respondent violated 21 CFR 1306.04(a) in issuing the prescriptions. According to the CALJ, ''there [was] no persuasive evidence to support the conclusion that the absence of an office visit by B.B., standing alone, render[ed] this prescribing event below the prevailing medical standard in Oklahoma.'' R.D. at 56. Again noting that under 21 CFR 1306.12(b), which allows for the issuance of multiple schedule II prescriptions to provide up to a 90-day supply provided certain conditions are met, the CALJ concluded that ''without persuasive expert or state regulatory guidance, evidence [of] the failure to conduct an in-person office visit does not establish that this prescribing event fell below the standard of care required in Oklahoma.'' *Id.* And in rejecting the allegations, the CALJ further cited the purported permissive nature of the State's documentation standard and asserted that ''none of the UDS results raised by Dr. Owen in his testimony were adequately noticed by the Government regarding this prescribing event.'' *Id.*

As for the CALJ's assertion that the UDS results were not adequately noticed, in the Show Cause Order, the Government alleged with respect to these prescriptions that Respondent ''once again issued [B.B.] controlled substance prescriptions . . . without taking appropriate steps to monitor his controlled substances use despite the persistent red flags of abuse and diversion he previously presented.'' ALJ Ex. 1, at 5 (¶ 3h). Even if this was not enough to provide Respondent with notice that the three UDSs would be at issue with respect to these prescriptions, Respondent did not object when the Government asked Dr. Owen: ''[a]re there any aberrant drug-taking behaviors here?'' and he answered: ''[t]here has [sic] been three previous.'' Tr. 158. I thus conclude that Respondent consented to the litigation of the issue.

As for the CALJ's assertion that there is no persuasive evidence that standing alone, the absence of an office visit rendered these prescriptions below the prevailing medical standard, the Respondent's prescribing without requiring an office visit does not stand alone. Rather, Dr. Owen credibly identified multiple deficiencies in Respondent's evaluation of B.B.'s pain complaint, including his failure to perform an adequate history and physical, his failure to properly evaluate how B.B.'s pain was effecting his ability to function, his failure to determine if the controlled substances were providing a therapeutic benefit and to try conservative treatments, and his failure to address the multiple instances of aberrant behavior. Of further note, Respondent offered no evidence refuting

[47] However, I do not rely on the January 19 UDS result that morphine was not detected. In contrast to the results which showed the presence of drugs which B.B. had not been prescribed, B.B. was five days past 30 days (the number of days the morphine prescription would have lasted if taken as directed), and the Government put forward no evidence that morphine would still be detectable five days later. While B.B.'s having been five days late raises other issues (such as whether he should have been going through withdrawal by January 19), the Government elicited no such testimony from Dr. Owen.

[48] As found above, on the January 27, 2012 visit note, Respondent had written that on ''2/13/12'' he prescribed ''Zpack, Prednisone 10 mg # 28, Phenergan.'' GX 3, at 44. The same visit note contains a further entry for ''2–22–12'' documenting the issuance of a prescription for 60 tablets of Soma (carisoprodol) 350 mg. *Id.*

Dr. Owen's testimony regarding these prescriptions. I thus conclude that these prescriptions lacked a legitimate medical purpose and that Respondent acted outside of the usual course of professional practice in issuing them. 21 CFR 1306.04(a).

The April 12 Prescriptions

On April 12, 2012, B.B. saw Respondent for an office visit. GX 3, at 42. According to the visit note, B.B. ''report[ed] his pain has been worse,'' that ''[h]e has run out of his medicines; he had them stolen,'' and that ''[h]e has done fairly well.'' *Id.* Moreover, on the Treatment Objective Evaluation section of the Treatment Plan, Respondent wrote ''fair → yes'' and made an arrow pointing to ''yes'' in the block for ''Has patient achieved treatment objective?'' and ''6'' in the block for ''Patient Completed . . . update [sic] pain scale.'' *Id.* at 28.

In the visit note, Respondent wrote that B.B. ''still has severe anxiety and depression'' and has been ''exposed to someone with HPV''; Respondent then wrote: ''[h]e is also wanting to switch his medicines because he is having trouble finding the OPANA.'' *Id.* Respondent also noted: ''[p]ast medical history extensively reviewed and placed in chart.'' *Id.*

In his exam findings, Respondent noted ''[l]ow back paraspinal and spinal tenderness,'' ''[n]egative straight leg raise,'' and ''[n]euro intact.'' *Id.* Respondent listed his diagnoses as ''[l]umber disc disease,'' ''[a]nxiety and depression'' and ''[e]xposure to infectious disease'' although he ''doubt[ed] that it was HPV.'' *Id.* Respondent then changed B.B.'s medications to Opana ER (extended release) 20 mg, b.i.d. (twice per day) and Percocet 10 mg (q. 12h) p.r.n. (as needed) for acute pain. *Id.; see also* Tr. 340. He also prescribed Soma (carisoprodol) one tablet b.i.d. GX 3, at 42.

Respondent further documented that he discussed the ''[a]ddictive, dependence, and tolerance nature of the medicines, as well as alternatives.'' *Id.* He noted that he ''suggested'' ''[n]on-medicinal pain and anxiety-relieving modalities.'' *Id.*

During this visit, Respondent also required B.B. to provide a UDS. The preliminary screening found that B.B. was negative for opiates and morphine. And according to the confirmatory testing done by the lab, which was reported back to Respondent on April 17, 2012, B.B. tested positive for oxymorphone, which was expected based on Respondent's having prescribed Opana to him. *Id.* He also tested positive for meprobamate, which was expected based on Respondent's having prescribed carisoprodol to B.B. *Id.* However, the lab further found that morphine was ''not detected,'' a result which was ''not expected'' because Respondent had prescribed morphine sulfate ER to B.B. on March 13, 2012. *Id.* Dr. Owen also noted that while ''the confirmed . . . drug test [was] positive for some of these drugs,'' Respondent had reported that he had run out of his medicines and that there was a ''lack of documentation of what he ran out of and what he should still be on.'' Tr. 167.

Dr. Owen found it problematic that B.B. had told Respondent that his pain was worse, that he had run out of his medicines and had them stolen. *Id.* at 159. As he explained:

> Well, one, his pain is worse, so why is it worse? Two is he's run out of his medications, and then he had them stolen. What is it? Did you run out of them because you self-escalated, or were they stolen and you ran out of them? It needs clarification. But either event, self-escalation or having them stolen, is a red flag.

Id.

Regarding B.B.'s report that his medications were stolen, Dr. Owen testified that because there had ''been the aberrant urine drug tests before . . . this, there is [sic] enough aberrant behaviors that'' Respondent needed ''to get the person to an addictionologist or a psychologist, or just stop prescribing these controlled substances since there's no evidence they're helping this gentleman.'' *Id.* at 212–13.

Dr. Owen also found problematic the notations in the visit note that B.B. reported that ''his pain has been was worse'' and that ''[h]e has done fairly well.'' *Id.* at 160. As Dr. Owen testified, the statement that ''[h]e has done fairly well . . . kind of conflicts with his pain is worse and the aberrant drug-taking behavior, so that's an unreliable statement.'' *Id.* Dr. Owen also explained that B.B.'s having ''severe anxiety and depression . . . are relative contraindications to prescribing controlled substances . . . [b]ecause it magnifies [the] perception of pain and disability.'' *Id.* Dr. Owen then testified that because of these conditions, Respondent should have requested a ''consultation by a psychologist'' but did not. *Id.* at 160–61.

Dr. Owen further testified that Respondent ''did not'' address B.B.'s ''ongoing stress and anxiety issues'' and that ''[h]e did not'' conduct a thorough patient history. *Id.* at 166. He then testified that Respondent had changed B.B.'s treatment plan by adding Percocet, but that Respondent ''change[d] the medications without ever . . . documenting [a] medical rationale to add any new medication.'' *Id.* Asked by the CALJ ''why would someone add Percocet,'' Dr. Owen testified that it is a short-acting opioid that could be added ''for break-through pain, if that's not being controlled well.'' *Id.* at 167.

Dr. Owen reiterated his earlier testimony that the patient record was ''not adequate'' to establish ''medical necessity'' for prescribing the controlled substances on this date and that between September 22, 2011 (when he assumed the care of B.B.) and April 12, 2012, Respondent had never established medical necessity for prescribing controlled substances to B.B. *Id.* at 173–74. He then opined that the prescriptions Respondent issued at this visit were issued outside of the usual course of professional practice and lacked a legitimate medical purpose. *Id.* at 174.

The CALJ sustained the Government's allegations only with respect to its contention that Respondent ignored the PMP data showing that B.B. was obtaining early refills of alprazolam and failed to take any action in response to this information, such as contacting the other prescribers or cautioning B.B. in response to this information. R.D. at 61–62. For reasons explained previously, the evidence does not support the contention that B.B. exhibited a pattern of obtaining early refills as of this visit. I also agree with the CALJ that the evidence does not support a finding that Respondent provided B.B. with an early refill of his pain medications.

However, for many of the same reasons previously discussed, the CALJ rejected the other evidence offered by the Government to prove that the prescriptions violated 21 CFR 1306.04(a). For example, the CALJ again reasoned that ''the UDS results prior to the April 12 amino assay UDS'' were not ''adequately noticed by the Government . . . regarding this prescribing event [and] are unavailable to support its expert's opinion here.'' R.D. at 60. And the CALJ further asserted that the Government could not rely on litigation by consent because it did ''not timely and affirmatively raise[]'' this theory. *Id.* However, as discussed previously, paragraph 3 of the Show Cause Order provided adequate notice that various aberrant drug tests would be at issue throughout the proceeding.[49] And even

[49] As the Show Cause Order alleged:

From on or about August 25, 2011 through on or about May 9, 2012, you issued controlled substance[] prescriptions to B.B. in violation of Federal and Oklahoma state law. You were aware on each of the occasions that you issued controlled substance[] prescriptions to B.B. that he presented

if it did not, the record fully supports the conclusion that the issue was litigated by consent as, given the absence of an objection, the Government had no obligation to affirmatively raise the argument (which it did in its Exceptions) until the CALJ issued his Recommended Decision.

The CALJ also failed to give weight to Dr. Owen's testimony that Respondent should have either referred B.B. to a specialist in addiction or spoken with his mental health professional, asserting that the Government did ''not establish[ ] that good medical practice in Oklahoma require[d] that.'' R.D. at 60. However, Dr. Owen is board-certified in pain management, a member of multiple national professional societies which focus on pain medicine and is a peer reviewer on pain medicine for the Journal of Pain Management. As previously explained, while the Oklahoma referral provision does not categorically require that a physician refer a patient to a specialist in addiction or consult with other providers, it clearly contemplates that a physician will use sound clinical judgment in determining whether a referral or consultation is necessary. And as to whether Respondent exercised sound clinical judgment when he neither referred B.B. to an addictionologist nor consulted with his mental health providers, Respondent produced no evidence showing that the standard of care in Oklahoma is materially different from the standard in Texas or the standard that is generally recognized by pain management practitioners. *See United States* v. *Joseph,* 709 F.3d at 1096.

In rejecting the Government's evidence, the CALJ also explained that the Government did not establish that ''good medical practice in Oklahoma require[d]'' that Respondent ''document[] in any specific level of detail the Respondent's discussion with B.B. about . . . [his] success on the treatment plan.'' R.D. at 60. Yet the Board's Regulation directs that ''[t]he physician should periodically review the course of pain treatment'' and ''[c]ontinuation or modification of controlled substances for pain management therapy depends on the physician's evaluation of progress toward treatment objectives. Satisfactory response to treatment may be indicated by the patient's decreased pain, increased level of function or improved quality of life. Objective evidence of improved or diminished function should be monitored . . . '' Okla. Admin. Code § 435:10–7–11(4). Moreover, another provision of the regulation requires physicians to ''keep accurate and complete records to include . . . follow-up evaluations . . . . [and] periodic reviews.'' *Id.* § 435:10–7–11(6). And the Board's Policy Statement explains that ''[a]ll such prescribing must be based on clear documentation of unrelieved pain'' and that ''the validity of the physician's treatment of the patient'' will be judged ''based on available documentation.'' Policy Statement, at 2.

Moreover, even if the Board's rule does not mandate ''any specific level of detail,'' Dr. Owen offered credible testimony as to why the standard of care clearly requires more documentation than that made by Respondent. As he explained, ''the purpose of documentation is for continuity of care. Not only continuity of care for this same provider from visit to visit but continuity of care should somebody else assume the care later on down the road or should you need to get a consultation, that the consultant can read your notes and understand what was happening with this patient at this point in time.'' Tr. 210.

Notably, while B.B.'s treatment objective was to return to work without pain, B.B. had not returned to work as of the April 12 visit (and never did during the course of Respondent's prescribing) and yet in the box for documenting whether he was meeting his treatment objective, Respondent wrote the words ''fair'' and ''yes.'' Yet at the hearing, Respondent did not recall why he wrote ''yes,'' just as he was ''unsure'' as to why he had written ''fair'' in the box at previous visits. As Respondent could not even explain why he made these entries, it is clear that no other physician who subsequently took over B.B.'s care could ''understand what was happening with'' B.B. at various points. So too, as Respondent could not explain the inconsistency between his having noted in B.B.'s progress note that ''his pain was worse'' while B.B. reported a decrease in his numeric pain rating and that ''he has done fairly well,'' I give weight to Dr. Owen's testimony that Respondent's notes fell below the standard of care.

Finally, the CALJ declined to give weight to Dr. Owen's testimony regarding Respondent's failure to address the aberrant immunoassay drug test result once again asserting that the Board's regulations ''contain no specific directive to mandate such a notation.'' R.D. at 61. However, as the CALJ noted, ''Respondent did not address this issue in his testimony'' and thus, there is no dispute that he took no action other than to send the specimen in for confirmatory testing. While it is true that Dr. Owen testified that the immunoassay test has reliability problems and thus, by sending the specimen to the lab for further testing ''it could not be said that [Respondent] took no action,'' what is notable is that Respondent offered no testimony that he ever asked B.B. which drugs had been purportedly stolen and when they had been stolen. Obviously, without determining and documenting what drugs had been stolen, Respondent could not evaluate whether the lab's finding (using GC–MS testing) that B.B. had tested negative for morphine was aberrational.[50]

Moreover, even crediting Respondent's testimony regarding the notation that B.B. wanted to switch medications because he was having troubling finding immediate release Opana, his testimony regarding the limitations imposed by the Medicaid formulary, and his explanation for why he provided B.B. with Percocet, I still conclude that the Government has proved that Respondent violated 21 CFR 1306.04(a) when he issued the Opana 20 ER and Percocet 10 prescriptions at this visit. As Dr. Owen testified, Respondent still had not done a thorough patient history and evaluation of B.B.'s pain complaint; failed to properly address multiple instances of aberrant behavior including the three previous UDSs and the other red flags he presented (*i.e.,* the claims of stolen medications and having run out of them); never consulted with B.B.'s mental health providers notwithstanding Respondent's finding that B.B. had severe anxiety and depression and that these are relative contraindications to prescribing controlled substances; never determined which drugs were stolen from B.B. or which drugs he ran out of thus rendering the UDS he obtained at this visit useless; never resolved inconsistencies in B.B.'s report of pain; and never established that the controlled substances provided a therapeutic benefit and that there was a

a high risk of abuse and/or diversion of controlled substances, as evidenced by the red flags documented in his patient file, such as aberrant urine drug tests, a request for early refills, and a claim of stolen drugs. You failed to address and, in fact, ignored these red flags, continuing to issue B.B. controlled substance prescriptions in the face of mounting evidence that he was misusing, abusing, and/or diverting the controlled substances you were prescribing.

ALJ Ex. 1, at 1 ¶ 3.

[50] While Respondent offered testimony to the effect that pain patients will maintain ''a stash'' of controlled substances in the event their medications are stolen, and asserted that B.B. did this as well, he offered no explanation as to how B.B. could have accumulated a stash of extended release medications (such as Morphine Sulfate ER, the drug which was not detected) while still managing pain.

medical necessity for the prescriptions. Also, while Dr. Owen did not specifically cite Respondent's failure to try conservative treatments such as physical therapy when he testified regarding these two prescriptions, the evidence shows that Respondent never referred B.B. for physical therapy.

Of further note, Respondent could not explain why he made the entries of ''fair'' and ''yes'' for whether B.B. was meeting his treatment objective, when he acknowledged that B.B.'s treatment objective was to return to work but never did so. And while he essentially agreed with Dr. Owen's testimony that a patient with depression and anxiety has a higher perception of pain and is at greater risk of self-escalating his use of controlled substances, he nonetheless maintained that while ''[i]n every other field but mental health we do'' consult with the patient's other practitioners, consulting with mental health practitioners who are ''also prescribing controlled substances . . . [t]hat doesn't happen very often.'' Tr. 410. I thus conclude that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose when, on this date, he issued the Opana and Percocet prescriptions to B.B. 21 CFR 1306.04(a).

The April 25 Prescriptions

On April 25, 2012, Respondent provided B.B. with a prescription for 30 Roxicodone (oxycodone) 15 mg. GX 5, at 4. B.B.'s file contains no documentation that there was an office visit, and notwithstanding that this was a change in medication from what Respondent had prescribed at the previous visit, there is no notation in the progress notes as to why he changed the prescription. *See generally* GX 3; *see also* Tr. 174–75. Moreover, while Respondent testified that he would ''routinely'' make an entry in the Treatment Objective Evaluation section of the Pain Management Treatment Plan ''if we were making a change in a medication,'' Tr. 357, no such entry was made on this date. *See* GX 3, at 28. Nor is there any documentation in the patient file that Respondent addressed with B.B. the aberrant drug test result (the non-detection of morphine) which had been reported to him on April 17. *See generally* GX 3.

According to Dr. Owen, when adding a new drug to a patient's regimen of pain medications, a physician ''would have to establish medical necessity with some type of note, using sound medical rationale.'' Tr. 175. Dr. Owen further testified that making such a notation is ''a standard of care, and it's part of the documentation guidelines that are issued across every state for the most part.'' *Id.* Asked if he could think of a reason why a physician ''would add a drug for the first time without seeing a patient,'' Dr. Owen answered: ''No. Or at least documenting the medical rationale and establishing medical necessity.'' *Id.* at 176. Dr. Owen then testified that Respondent did not take appropriate steps to establish medical necessity for the prescription, reiterating his earlier testimony that Respondent had not demonstrated that conservative care had been tried and been unsuccessful, as well as that there was a ''clinically meaningful and objective therapeutic benefit from the previous use of controlled substances.'' *Id.* He again opined that the prescription was not issued in the usual course of professional practice and lacked a legitimate medical purpose. *Id.*

Regarding the Roxicodone prescription, Respondent asserted that he ''was just doing a two-week trial, trying to figure out his dose, and at the time, most likely the patient didn't have any punches on his card left, and Roxicodone is much cheaper than Percocet, and it's the same medication.'' *Id.* at 355. However, Respondent did not document any of this in B.B.'s record. Nor did he explain why he failed to follow his routine of making an entry in the Treatment Objective Evaluation section of the Pain Management Treatment Plan given that he had changed B.B.'s medication.

As for the April 12 UDS lab report, which he had obtained prior to issuing the prescription and which found that morphine was not detected and that this result was not expected based on the prescribed medications, Respondent testified that in his opinion the result was not aberrant. Respondent did not explain whether this was based on his previous claim that the oxymorphone is a metabolite of morphine or because B.B. had reported that his medications were stolen. Tr. 364–66.

As Respondent offered no testimony that he asked B.B which of his drugs were stolen and was told that it was the morphine, B.B.'s claim of stolen drugs does not render the test non-aberrant. Moreover, the lab reports noted various instances in which the presence of various metabolites was consistent with prescribed medications and that the particular substances were metabolites of prescribed drugs but included no such notation with respect to oxymorphone and morphine. Finally, Respondent's testimony is contradicted by science and he offered no evidence which would support a finding that he had a good faith but mistaken belief that oxymorphone is a metabolite of morphine. Based on these reasons, I find that the April 12 UDS was aberrant and that Respondent knew it to be.

While the CALJ concluded that the Government could not rely on the four UDS reports, he nonetheless found that the evidence supported the Government's contention that Respondent acted outside of the usual course of professional practice in issuing the prescriptions. R.D. at 64. While the CALJ accepted Respondent's assertion that Percocet and Roxicodone are similar drugs in that they both contain oxycodone (although he noted that Roxicodone does not contain acetaminophen and contains only oxycodone), *id.* at n.119, he explained that Respondent did not merely provide a refill but was changing B.B.'s medications. *Id.* at 63–64. While the CALJ then noted Dr. Owen's opinion that the standard of care required the ''establish[ment] of medical necessity with some type of note, using sound medical rationale,'' the CALJ then explained that ''it is not the documentation of the medical determination that carries the day here. Rather, it is whether the evidence or record supports the Respondent's proposition that he made such a determination; and it does not.'' *Id.* at 64. And while again asserting erroneously that the Oklahoma regulation stating that ''[t]he medical record . . . *should* document the presence of one or more recognized medical indications for the use of a controlled substance'' is permissive, *id.* (emphasis added by CALJ), he concluded that Respondent acted outside of the usual course of professional practice because he neither documented an indication for a medication change nor could ''remember it in a way that is persuasive.'' [51] *Id.*

While I agree with the CALJ that Respondent's testimony was unpersuasive, I also give weight to Dr. Owen's testimony that Respondent had not established medical necessity for prescribing controlled substances by demonstrating that conservative treatments had been tried and been unsuccessful and by establishing an ''objective therapeutic benefit from the previous use of controlled substances.'' Tr. 176. Moreover, Dr. Owen's testimony as to the other reasons why

[51] Unexplained by the CALJ is why he did not apply the same reasoning to Respondent's testimony that he was ''unsure'' as to why, on various occasions, he wrote ''fair'' in the block for noting whether B.B. had achieved his treatment objective as well as to why he wrote ''yes'' when B.B never returned to work during the course of Respondent's prescribing to him.

the Respondent did not establish a medical necessity for the previous prescriptions likewise applies to the Roxicodone prescription issued on this date. Finally, once again B.B. provided an aberrant drug test which Respondent ignored (and could not properly evaluate). I therefore conclude that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose when he prescribed Roxicodone to B.B. on this date.

The May 9, 2012 Prescriptions

On May 9, 2012, Respondent wrote B.B. a prescription for 60 Opana ER 20 mg. GX 3, at 93; GX 5, at 27. Respondent did not require an office visit, and he made no notations in the progress notes regarding the prescription. *See generally* GX 3; *see also* Tr. 177–78. Regarding the prescription, Dr. Owen again testified that Respondent ''needed to establish medical necessity for continuation of controlled substances'' and ''did not.'' *Id.* at 178.

Asked to provide his opinion as to Respondent's prescribing of controlled substances from September 2011 through May 9, 2012, Dr. Owen opined that Respondent did not adequately review B.B.'s medical history. *Id.* He further opined that the treatment plan ''would have the logic behind the treatment'' and would have ''establish[ed] that conservative care has not been helpful and that [an] objective and clinically meaningful therapeutic benefit from the use of controlled substances has been established, if [they] ha[d] previously been used.'' *Id.* Dr. Owen then testified that none of the controlled substance prescriptions Respondent issued to B.B. were issued in the usual course of professional practice and for a legitimate medical purpose. *Id.* at 178–79.

Asked why he refilled the prescriptions,[52] Respondent testified that ''I got a phone call that he was wanting his medicines refilled and that the [R]oxicodone had worked for him and *et cetera,* so we were converting him back into the one-month prescriptions in the Schedule IIs and going back to this three-month office visit.'' Tr. 356. Respondent offered no testimony addressing Dr. Owen's criticism that he still had not established that there was a medical necessity for prescribing controlled substances, which included the Opana. *See generally id.* at 356–57.

The CALJ found that because he ''had PMP data indicating that B.B. had previously engaged in a pattern of procuring early refills from multiple prescribers,'' Respondent's issuance of the prescription was ''a breach of [his] obligation as a registrant to guard against the diversion of controlled substances.'' R.D. at 67–68. The CALJ thus concluded that Respondent acted outside of the course of professional practice in issuing the Opana prescription.[53] *Id.* at 68.

While I agree with the CALJ that Respondent violated 21 CFR 1306.04(a) in issuing the prescription, I do so for reasons other than that B.B. had ''engaged in a pattern of early refills.'' As Respondent did not see B.B. on this date, I give weight to Dr. Owen's testimony that Respondent did not establish medical necessity for the prescription (or any of the prescriptions for that matter) for the reasons he explained throughout his testimony as well as for the other reasons discussed in this Decision.

* * *

In his Recommended Decision, the CALJ alleges that the Agency ''has been engaged in a deliberate winnowing of the scope of Factor 2, to the extent that . . . it now largely mirrors the considerations found in Factor 4.'' R.D. 77. He further asserts that the Agency's rejection of dicta which has appeared in various recommended decisions to the effect that Factor 2 ''manifests Congress's acknowledgement that . . . the quantitative volume in which an applicant has engaged in the dispensing of controlled substances may be [a] significant factor'' in the public interest determination, *see JM Pharmacy Group, Inc.,* 80 FR 28667, 28684 (2015), is inconsistent with the plain meaning of Factor 2. R.D. 77–81.

Congress did not, however, define the term ''experience'' in the CSA, and as the Administrator has explained at length, the word has multiple meanings, none of which ''compels the conclusion that Congress acknowledged that the quantitative volume of an applicant's dispensing may be a significant consideration under this factor, and certainly none [of these definitions] suggests that the Agency is required to count up the number of times an applicant or registrant has dispensed controlled substances,'' *JM Pharmacy Group,* 80 FR at 28667 n.1, let alone compare the number of lawful dispensings against those shown to be unlawful, as some registrants have argued. *See, e.g., Syed-Jawed Akhtar-Zaidi,* 80 FR 42961, 42967 (2015) (arguing that physician was denied a ''fair adjudication'' where the Government based its case only on undercover visits but had seized 400 patient files from physician's office and yet ''failed to present any evidence . . .

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[52] In her questioning of Respondent, Respondent's counsel referred to a Roxicodone prescription as having been issued on May 9, 2012, and in his testimony regarding the prescriptions he wrote on that date, Respondent referred to both a Roxicodone prescription and an Opana ER 20 mg prescription. Tr. 356. While GX 5 contains a legible copy of the May 9, 2012 Opana ER prescription, *see* GX 5, at 27, it does not contain a copy of a Roxicodone prescription, and as for GX 3, the copy of the purported Roxicodone prescription is illegible. GX 3, at 93.

Moreover, at no point did the Government put in issue whether Respondent violated 21 CFR 1306.04(a) when he issued the Roxicodone prescription. The Government did not mention this prescription in the specific allegation it made in the Show Cause Order regarding the events of May 9, 2012, *see* ALJ Ex. 1, at 6 ¶ 3(j); it did not mention the prescription in its Pre-hearing Statement, *see* ALJ Ex. 5, at 21; it did not question Dr. Owen about this prescription, *see* Tr. 177–78; and even after Respondent testified about it, the Government did not argue in its post-hearing brief that Respondent issued this Roxicodone prescription in violation of 21 CFR 1306.04(a). Thus, I do not consider the prescription.

[53] In his decision, the CALJ explained that ''[a]lthough the Government's pleadings do not specifically refer to the early refills in support of this prescribing event, the [Show Cause Order] alleges that the prescribing was effected 'despite previous indications that B.B. was at risk for abuse or diversion of controlled substance[s].'" R.D. 67–68 n.124 (quoting ALJ Ex. 1, at 6). The CALJ also noted that ''[t]he Government Prehearing Statement alleges that the prescription for Opana was issued 'despite previous indications that B.B. was at risk for abuse or diversion of controlled substances[s] . . . .'" *Id.* (quoting ALJ Ex. 5, at 21). The CALJ then explained that ''[t]hese broadly-worded phrases supply sufficient notice . . . to constitute sufficient notice to use the PMP early refill evidence in support of this prescribing event.'' *Id.*

I am, however, left to wonder why the same reasoning did not apply to the multiple instances in which the CALJ asserted that the Government did not provide sufficient notice that it intended to rely on the various UDSs. Notably, paragraph 3 of the Show Cause Order alleged that:

[f]rom on or about August 25, 2011 through on or about May 9, 2012, you issued controlled substance[] prescriptions to B.B. in violation of Federal and Oklahoma state law. You were aware on each of the occasions that you issued controlled substance[] prescriptions to B.B. that he presented a high risk of abuse and/or diversion of controlled substances, as evidenced by the red flags documented in his patient file, such as aberrant urine drug tests. . . . You failed to address and, in fact, ignored these red flags, continuing to issue B.B. controlled substance prescriptions in the face of mounting evidence that he was misusing, abusing, and/or diverting the controlled substances you were prescribing.

ALJ Ex. 1, at 1. *See also, e.g., id.* at 3 (Sept. 22, 2011 Rxs: ''You did not address with B.B. the now second aberrant drug screen in an approximately three month period'' and ''[y]ou took no other steps to monitor B.B's controlled substance use, such as requiring him [to] take another drug screen due to the two failed ones''); *id.* at 4 (Nov. 18 and Dec. 15 Rxs: alleging that ''you did not take any steps to monitor [B.B.'s] controlled substances use despite his history of misusing, abusing, or diverting controlled substances''); *id.* at 5 (Mar. 13, 2012 Rxs: ''you once again issued him controlled substance[] prescriptions . . . without taking appropriate steps to monitor his controlled substance use despite the persistent red flags of abuse and diversion he previously presented'').

that the treatment of those patients failed to meet the standard of care,'' as well as any evidence regarding the treatment of ''over 400 additional patients''' whose charts were not seized), *pet. for rev. denied,* 841 F.3d 707, 713 (6th Cir. 2016).

Notably, the CALJ does not cite to any of the sources typically invoked by the courts in cases which have held that a statute has a plain meaning.[54] *See, e.g.,Williams* v. *Taylor,* 529 U.S. 420, 431–32 (2000) (giving statutory text its ''ordinary, contemporary, common meaning'' based on definitions from *Webster's New International Dictionary* and *Black's Law Dictionary*); *United States* v. *Labonte,* 520 U.S. 751, 757–58 (1997) (giving statutory text ordinary meaning by reference to same dictionaries); *Levorsen* v. *Octapharma Plasma, Inc.,* 828 F.3d 1227, 1231 (10th Cir. 2016) (relying on *Webster's Third New International Dictionary* for meaning of statutory terms). And while ''[t]he plainness or ambiguity of statutory language is [also] determined by reference to the . . . specific context in which that language is used, and the broader context of the statute as a whole,'' *Yates* v. *United States,* 135 S.Ct. 1074, 1082 (2015), nothing in the context of providing factors for determining the public interest supports the notion that the term ''experience'' requires a consideration of the quantitative volume of an applicant's dispensing.

As previously explained, Congress enacted the public interest standard to provide DEA with additional authority to address the diversion of controlled substances because prior to the 1984 amendment of section 823(f), the Agency's authority to deny an application or revoke a registration was limited to cases in which a practitioner: (1) Had materially falsified an application, (2) had been convicted of a State or Federal felony offense related to controlled substances, or (3) had his State license or registration suspended, revoked, or denied. *See* S. Rep. No. 98–225, at 266 (1983), *as reprinted in* 1984 U.S.C.C.A.N. 3182, 3448. Finding that the ''[i]mproper diversion of controlled substances'' was ''one of the most serious aspects of the drug abuse problem,'' and yet ''effective Federal action against practitioners ha[d] been severely inhibited by the [then] limited authority to deny or revoke practitioner registrations,'' *id.,* Congress concluded that ''the overly limited bases in current law for denial or revocation of a practitioner's registration do not operate in the public interest.'' *Id.*

The Senate Report thus explained that ''the bill would amend 21 U.S.C. 824(f) [sic] to expand the authority of the Attorney General to deny a practitioner's registration application.'' *Id.* The Report further explained that ''in those cases in which registration is clearly contrary to the public interest, the amendment would allow a swift and sure response to the danger posed to the public health and safety by the registration of the practitioner in question.'' *Id.* at 267, *as reprinted in* 1984 U.S.C.C.A.N. at 3449. Accordingly, section 823(f) was amended to provide the Agency with authority to deny an application based upon a finding that the issuance of a registration ''would be inconsistent with the public interest,'' upon consideration of the five public interest factors, including the experience factor. *Id. See also* 21 U.S.C. 824(a)(4). Nowhere in the Report's discussion of the amendments to sections 823 and 824 is there any support for the notion that Congress deemed the quantitative volume of a practitioner's dispensings to be a significant consideration in making findings under the experience factor.[55]

Indeed, as *Krishna-Iyer* explained, because the CSA limits registration to those practitioners who possess authority under state law to dispense controlled substances in the course of professional practice, and patients with legitimate medical conditions routinely seek treatment from licensed medical professionals, every registrant can undoubtedly point to an extensive body of legitimate prescribing over the course of his professional career. *See Krishna-Iyer,* 459 FR at 463. Thus, in past cases, this Agency has given no more than nominal weight to a practitioner's evidence that he has dispensed controlled substances to thousands of patients in circumstances which did not involve diversion. *See, e.g., Caragine,* 63 FR at 51599 (''[T]he Government does not dispute that during Respondent's 20 years in practice he has seen over 15,000 patients. At issue in this proceeding is Respondent's controlled substance prescribing to 18 patients.''); *id.* at 51600 (''[E]ven though the patients at issue are only a small portion of Respondent's patient population, his prescribing of controlled substances to these individuals raises serious concerns regarding [his] ability to responsibly handle controlled substances in the future.''); *see also Medicine Shoppe—Jonesborough,* 73 FR 364, 386 & n.56 (2008) (noting that pharmacy ''had 17,000 patients,'' but that ''[n]o amount of legitimate dispensings can render . . . flagrant violations [acts which are] 'consistent with the public interest.'''), *pet. for review denied, Medicine Shoppe-Jonesborough* v. *DEA,* slip. op. at 11 (6th Cir. Nov. 13, 2008).

As in past cases, the parties may continue to introduce evidence as to the extent of both a practitioner's lawful or unlawful dispensing activities. However, under Agency precedent, proof of a single act of intentional or knowing diversion remains sufficient to satisfy the Government's *prima facie* burden and to impose on a respondent the obligation to produce evidence to show that it can be entrusted with a registration. *See Krishna-Iyer,* 74 FR 459, 463 (2009); *see also Alan H. Olefsky,* 57 FR 928, 928–29 (1992) (revoking registration based on physician's presentation of two fraudulent prescriptions to pharmacy and noting that the respondent ''refuses to accept responsibility for his actions and does not even acknowledge the criminality of his behavior'').

The CALJ further alleges that on remand in *Krishna-Iyer,* the Agency failed to follow the Eleventh Circuit's unpublished decision, in which the Administrator was directed to consider 12 additional patient files as well as the ''entire corpus'' of the physician's controlled substance dispensing for evidence of the physician's ''positive experience'' in dispensing controlled substances. R.D. 79. However, the Administrator carefully reviewed those files, and noted that the files ''included

[54] As the Administrator noted in *JM Pharmacy,* the word ''experience'' has multiple meanings. Among those most relevant in assessing its meaning as used in the context of Factor Two are: (1) The ''direct observation of or participation in events as a basis for knowledge,'' (2) ''the fact or state of having been affected by or gained knowledge through direct observation or participation,'' (3) ''practical knowledge, skill, or practice derived from direct observation of or participation in events or in a particular activity,'' and (4) ''the length of such participation.'' *See Merriam-Webster's Collegiate Dictionary* 409 (10th ed. 1998); *see also The Random House Dictionary of the English Language* 681 (2d ed. 1987) (defining experience to include ''the process or fact of personally observing encountering, or undergoing something,'' ''the observing, encountering, or undergoing of things generally as they occur in the course of time,'' ''knowledge or practical wisdom gained from what one has observed, encountered, or undergone'').

[55] As the CALJ noted, one of the House Reports explained that ''[t]he second factor shall not, of course, be construed in anyway to hinder registration of recent graduates of professional schools who may have no professional experience dispensing or conducting research with controlled substances.'' H.R. Rep. No. 98–835, Pt. 1, at 14. Obviously, if Factor Two's meaning was so plain, the Judiciary Committee had no need to express that it should not be construed to deny registrations to newly-licensed practitioners, most of whom can point to no volume of dispensings other than by observing a physician during clinical rotations. Thus, the Committee's direction refutes the notion that the quantitative volume of an applicant's dispensings may be a significant consideration under the factor.

numerous instances in which [the physician] appear[ed] to have ignored warning signs that the patient was either abusing or diverting controlled substance''; she also made findings with respect to multiple incidents. 74 FR at 460–61 n.3. And as for the ''entire corpus'' of the physician's prescribing, notwithstanding the physician had not introduced any evidence as to the propriety of her prescribing to the ''thousands of other patients'' she had treated, the Administrator assumed that every one of those prescriptions was lawfully issued. *Id.* at 461. However, as the Administrator explained, even if those prescriptions were lawfully issued, they did not negate the Government's *prima facie* showing that the physician had knowingly diverted drugs to others. *Id.* at 462–63. And while the Administrator granted the physician a new registration, she made clear that had the physician not acknowledged her misconduct, she would have again revoked the physician's registration. *Id.* at 463.

Not mentioned by the CALJ is that several years later, the exact same arguments were raised before the Eleventh Circuit by two different physicians and rejected without any discussion. In *Lynch* v. *DEA,* a physician whose registration was revoked by the Agency for unlawful prescribing,[56] argued that the Agency's Decision arbitrarily ''limited its consideration of [his] experience to only ten prescriptions issued to out of state patients, the two undercover patients, and the use of a rubber stamp on nine prescriptions . . . and did not consider the evidence that he had been dispensing controlled substances for over twenty years,'' and thus ''fail[ed] to consider the overwhelming evidence of positive experience.'' *See* Brief of Petitioner 31–32, *Lynch* v. *DEA,* No. 11–10207–EE (11th Cir. 2011) (citing *Krishna-Iyer, M.D.,* v. *DEA,* 249 Fed. Appx. 159, 161 (11th Cir. 2007) (unpublished)). Notably, the Eleventh Circuit denied the physician's petition for review, holding that the revocation of the physician's registration ''was not arbitrary, capricious, an abuse of discretion or contrary to law.'' *Lynch* v. *DEA,* Slip. Op. at 4 (11th Cir. May 22, 2012) (per curiam). Indeed, the Court of Appeals did not even deem the respondent's argument to warrant discussion. *See id.* at 2–4.

So too, in *McNichol* v. *DEA,* another physician whose registration was revoked for issuing unlawful prescriptions to four undercover officers relied on *Krishna-Iyer* to argue that the Agency's final decision was arbitrary and capricious because the investigation ''failed to take into account any positive conduct on [his] part'' and ''intentionally ignored any evidence not specifically related to the undercover patients.'' Brief of Petitioner 21–23, *McNichol* v. *DEA,* No. 12–15292 (11th Cir. 2013) (citing *Krishna-Iyer,* 249 Fed. Appx. at 161). Of note, the Agency's Decision specifically rejected the ALJ's assertion that the Government was required to review the patient charts for patients other than the undercover officers and look for evidence of the physician's ''positive prescribing practices'' so as to ''develop evidence to enlighten the administrative record.'' *T.J. McNichol,* 77 FR 57133, 57146 (2012). The Administrator further explained that ''[h]aving garnered evidence of what it believed to be unlawful prescriptions issued to the four undercover officers, the Government was entitled to go to hearing with that evidence.'' *Id.*

Again, the Eleventh Circuit denied the physician's petition for review, holding that ''the record supports that the administrator considered all aspects of the evidence in light of the applicable statutory factors and . . . [her] decision was not arbitrary and capricious. . . . [w]e also agree with the administrator's conclusion that [the physician's] continued registration would be inconsistent with the public interest.'' *McNichol* v. *DEA,* Slip. Op. at 4 (11th Cir. Oct. 17, 2013) (per curiam). Here again, the Court did not deem Respondent's argument to warrant discussion.

The CALJ also dismisses the published decision of the Tenth Circuit in *MacKay* v. *DEA,* 664 F.3d 808 (10th Cir. 2011), asserting that ''the Agency's view of Factor 2 *was not a focus* of the court's decision.'' R.D. 80 (emphasis added). Therein, after the Agency revoked the physician's registration based on his unlawful prescribing to two patients, the physician argued on review that:

> The DEA must consider the totality of the experiences a physician has, including: the interaction reflected in each of the medical charts of patients that were seized by the DEA, the ''thousands of other patients . . . [and] positive experience'' with dispensing controlled substances and not merely the testimony of people trying to make a case against the physician.
>
> The DEA, in fact, flat out disregarded the substantial experience Dr. MacKay has had with dispensing controlled substances. The law requires the DEA to consider evidence that reflects that the physician is not a danger to the public and delineates how the DEA must do so.

Brief of Petitioner, 13–14, *MacKay* v. *DEA.* Moreover, after discussing the affidavits of several patients who testified that Dr. MacKay had provided medically appropriate, and in some instances, beneficial treatment for their pain, Respondent argued that ''[t]he DEA decision is based only on the medical charts of a few patients out of thousands Dr. MacKay has successfully treated over the years. In fact . . . the DEA's expert only reviewed twelve patient files and testified about even fewer.'' *Id.* at 20.

Notwithstanding that the Agency's decision was based entirely on the evidence with respect to two patients (K.R. and M.R.), *see Dewey C. MacKay,* 75 FR 49956, 49972 (2009); the Tenth Circuit rejected Respondent's contention that the Agency had failed to consider his ''positive experience'' evidence. As the Court of Appeals explained:

> Despite Dr. MacKay's claim to the contrary, the Deputy Administrator considered the entire record, including the evidence in Dr. MacKay's favor. She determined, however, that none of Dr. MacKay's evidence negated the DEA's prima facie showing that Dr. MacKay had intentionally diverted drugs to K.D. and M.R. Indeed, she found that even if Dr. MacKay had provided proper medical care to all of his other patients, that fact would not overcome the government's evidence with regard to M.R. and K.D.
>
> None of the evidence presented by Dr. MacKay undermines the evidence relating to M.R. and K.D. Although numerous patients and colleagues of Dr. MacKay related their positive experiences with him, none had any personal knowledge regarding his treatment of M.R. and K.D. Notably, Dr. MacKay's medical expert . . . failed to specifically discuss and justify Dr. MacKay's treatment of M.R. and K.D. As a result, none of Dr. MacKay's evidence contradicts the testimony and evidence presented by the DEA relating to the knowing diversion of drugs to these two patients.

664 F.3d at 819.

The Court of Appeals then rejected MacKay's contention that the Deputy Administrator had misweighed the public interest factors. As the Court explained: ''[i]n light of Dr. MacKay's misconduct relating to factors two and four, the government made a prima facie showing that [his] continued registration is inconsistent with the public interest.'' *Id.* (citing 75 FR at 49977). And the Court further explained that ''[a]lthough Dr. MacKay may have engaged in the legitimate practice of pain medicine for many of his patients, the conduct found by the Deputy Administrator with respect to K.D. and M.R. is sufficient to support her determination that his continued registration is inconsistent with the public interest.'' *Id.*

[56] *See Ronald Lynch,* 75 FR 78745 (2010).

The CALJ further asserts that ''to the extent that the ever-widening range of activity that the Agency considers 'positive experience' is banned, Factor 2 analysis, in the majority of Agency cases, will largely consist of a reprise of evidence also considered under Factor 4.'' R.D. 81. Continuing, the CALJ contends that ''[t]he Government's ability to introduce alleged acts of malfeasance will warrant double consideration under Factor 2 and again under Factor 4, but respondents will remain unable to demonstrate that a transgression constituted an isolated occurrence when compared with even many years of compliant practice as a registrant.'' *Id.*

The CALJ is mistaken. As *JM Pharmacy* made clear, ''[a]s in past cases, the parties may continue to introduce evidence as to the extent of both a practitioner's lawful or unlawful dispensing activities.'' 80 FR at 28668 n.2. Indeed, in these proceedings, the Agency will assume, without requiring the production of any evidence by a respondent, that the practitioner has lawfully issued every prescription other than those alleged by the Government to be unlawful. And contrary to the CALJ's understanding, notwithstanding the Agency's rejection of the notion that ''the plain meaning'' of Factor 2 mandates the consideration of ''the quantitative volume'' of a respondent's dispensing, a respondent may still argue that his conduct was ''an isolated occurrence when compared with even many years of compliant practice'' or an ''aberration.'' R.D. 81–82.

Equally misplaced is the CALJ's assertion that the Government's evidence of unlawful prescribing will hence be given double consideration in the public interest determination. *Id.* at 82. While evidence of a respondent's unlawful prescribing is clearly relevant in assessing both his/her experience in dispensing controlled substances and compliance with applicable laws related to controlled substances and thus typically discussed under both factors—indeed, because of the overlap between the factors, the Agency has long discussed both factors together—this does not mean that the prescriptions have been double weighted. *See, e.g., Albert Lepis,* 51 FR 17555, 17555–56 (1986).

As the Agency's decision on remand in *Krishna-Iyer* explained, ''[w]hether this conduct is evaluated under factor two . . . or factor four, or both [factors], is of no legal consequence. In establishing [the Government's] *prima facie* case, the fundamental question is whether [a] [r]espondent 'has committed such acts as would render [his] registration inconsistent with the public interest.' '' [57] 74 FR at 462 (quoting 21 U.S.C. 824(a)(4)). Moreover, as both the Agency and federal courts have recognized, findings under a single factor can support the denial of an application or the revocation of a registration. *See MacKay,* 664 F.3d at 821 (quoting *Krishna-Iyer,* 74 FR at 462).

While the Agency has explained that proof of a single act of intentional or knowing diversion remains sufficient to satisfy the Government's *prima facie* burden and to impose on a respondent the obligation to produce evidence to show that he can be entrusted with a registration, this is not the result of double weighting the misconduct. *See Krishna-Iyer,* 74 FR at 463; *see also MacKay,* 664 F.3d at 819. Rather, it is based on the recognition that a violation of the prescription requirement (21 CFR 1306.04(a)) ''strikes at the CSA's core purpose of preventing the abuse and diversion of controlled substances.'' *Samuel Mintlow,* 80 FR 3630, 3653 (2015); *accord David A. Ruben,* 78 FR 38363, 38386 (2013). Accordingly, the Agency has held that where the Government proves that a practitioner has engaged in knowing or intentional diversion, a respondent is not entitled to be registered (or maintain an existing registration) absent a credible acceptance of responsibility.[58] As the Tenth Circuit has recognized:

> . . . 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 . . . Administrator 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. Without Dr. MacKay's testimony, the Deputy Administrator had no evidence that Dr. MacKay recognized the extent of his misconduct and was prepared to remedy his prescribing practices.

MacKay, 664 F.3d at 820 (citing *Hoxie* v. *DEA,* 419 F.3d 477, 483 (2005)).

Thus, contrary to the CALJ's understanding, a respondent can still argue (as he/she always could) that his/her misconduct in knowingly or intentionally diverting controlled substances was ''an isolated occurrence'' or an ''aberration'' in his/her years of otherwise compliant professional practice. However, one cannot argue that his/her conduct was ''an isolated occurrence'' or ''an aberration'' without first acknowledging that he/she has engaged in unlawful conduct.[59] And in any case, Respondent has made no such argument.

Summary of Factors Two and Four

While Respondent put on no evidence as to the lawfulness of his controlled substance prescribing to patients other than B.B., I have assumed that every other prescription he has issued in the course of his professional career complied with 21 CFR 1306.04(a).[60] Nonetheless, as found above,

[57] While *Krishna-Iyer* involved a revocation proceeding, the public interest inquiry is essentially the same where the Agency proposes the denial of an application.

[58] In *Krishna-Iyer,* the Agency explained that ''while some isolated decisions . . . may suggest that a practitioner who committed only a few acts of diversion was entitled to regain his registration even without having to accept responsibility for his misconduct, *see Anant N. Mauskar,* 63 FR 13687, 13689 (1998), the great weight of the Agency's decisions are to the contrary.'' 74 FR at 464. Noting that ''[t]he diversion of controlled substances has become an increasingly grave threat to this nation's public health and safety,'' the Agency clarified its policy and explained that ''[t]o the extent *Mauskar,* or any other decision of this Agency suggests otherwise, it [wa]s overruled.'' *Id.* at 464 n.9. Continuing, the Agency explained that 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 knowing or intentional diversion, this Agency will not grant or continue the practitioner's registration unless he accepts responsibility for his misconduct. *Id.* at 464.

[59] The CALJ also asserts that in *JM Pharmacy,* ''the Agency determined in clear terms that it will no longer consider whether established misconduct presented an isolated piece of an applicant's record, irrespective of whether the misconduct *is intentional or otherwise.*'' R.D. at 82 (emphasis added). To the contrary, in *JM Pharmacy,* the Administrator denied two applications for pharmacy registrations, expressly adopting the CALJ's conclusion that the owner of the two pharmacies had ''knowingly and materially falsified the applications he submitted.'' 80 FR at 28669; *see also id.* at 28683 (CALJ's Recommended Decision: ''It is clear that the Respondents, through their common owner . . . *knew or should have known* that the answers provided to Question 2 were false, and that their . . . applications contained material falsifications. The absence of any logical basis for confusion and the past experience of [their owner] as a registrant holder and pharmacist preponderantly support a finding that the misrepresentations *were intentional, not negligent.* . . . *[E]ven standing alone, the denial of the Respondent's . . . applications is adequately supported on this record based on the material falsifications set forth in the filed applications.*'') (emphasis added); *id.* at 28689 (CALJ noting that owner's ''insistence that his false response to an application query . . . was simply not credible and defeats the Respondents' efforts to meet the Government's case. The false misrepresentation[s] . . . are sufficiently egregious on their face to warrant sanction''). Thus, *JM Pharmacy* does not support the CALJ's assertion that the Agency does not consider a respondent's level of culpability in committing misconduct.

[60] This assumption may actually be more favorable to Respondent than what is warranted with respect to his experience in dispensing controlled substances. In 2008, Respondent was sanctioned by the Board for ''prescribing controlled dangerous substances'' over the course of a three-year period to a patient with whom he had sexual relations. RX 3, at 2.

Respondent issued multiple prescriptions for various schedule II narcotics outside the course of professional practice and which lacked a legitimate medical purpose. 21 CFR 1306.04(a). Moreover, the evidence in no sense shows that Respondent was merely neglectful, but rather supports a finding that Respondent acted with knowledge that B.B. was abusing and/or diverting the controlled substances he prescribed. And while the evidence of record does not support a finding that Respondent unlawfully prescribed to any other patient, it is significant that his misconduct went on for eight months and involved 19 prescriptions for schedule II narcotics alone. Thus, I conclude that Respondent has engaged in egregious misconduct which supports the denial of his registration. *See MacKay,* 75 FR at 49997; *Krishna-Iyer,* 74 FR at 463; *Olefsky,* 57 FR at 928–29.

I therefore hold that the Government has established its *prima facie* case that Respondent's registration ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f).

Sanction

Where, as here,[61] the Government has met its *prima facie* burden of showing that issuing a new registration to the applicant would be inconsistent with the public interest, a respondent must come forward with '''''sufficient mitigating evidence''''' to show why he can be entrusted with a new 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 [his] actions and demonstrate that [he] 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 MacKay* v. *DEA,* 664 F.3d at 820; *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).

Finally, 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.''' *Joseph Gaudio,* 74 FR 10083, 10094 (2009) (quoting *Southwood Pharmaceuticals, Inc.,* 72 FR 36487, 36504 (2007)); *see also Robert Raymond Reppy,* 76 FR 61154, 61158 (2011); *Michael S. Moore,* 76 FR 45867, 45868 (2011). 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'').

Even with respect to the violations which he found proven, the CALJ found that ''one clear and consistent aspect of the record is the Respondent's almost dogged determination to accept no responsibility for his actions.'' R.D. 92. This holds equally true with respect to each of the controlled substance prescriptions he issued in violation of 21 CFR 1306.04(a), as other than his meager acknowledgement that his documentation on certain progress notes could have been better, Respondent has not accepted responsibility for his misconduct with respect to any of the controlled substance prescriptions he unlawfully issued to B.B. beginning on September 22, 2011 and ending on May 9, 2012. And as explained above, the evidence supports the conclusion that Respondent was not merely neglectful, but that he engaged in knowing misconduct when he issued the prescriptions. As the Tenth Circuit has recognized, Respondent's failure to acknowledge his misconduct establishes that he is not prepared to remedy his unlawful prescribing practices. *MacKay,* 664 F.3d at 820. This alone supports the conclusion that he cannot be entrusted with a new registration.[62]

So too, while the Agency's interest in specific deterrence is not triggered (because I deny his application), as found above, Respondent's misconduct is egregious and the Agency has a manifest interest in deterring similar misconduct by other practitioners. This interest would be compelling even if it was not the case that the nation was confronting an epidemic of opioid abuse. I therefore conclude that granting Respondent's application ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f). Accordingly, I will deny his application.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 28 CFR 0.100(b), I order that the application of Wesley Pope, M.D., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This Order is effective immediately.

Dated: March 16, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–05676 Filed 3–22–17; 8:45 am]

BILLING CODE 4410–09–P

[61] So too, the egregiousness and extent of a registrant's misconduct are significant factors in determining the appropriate sanction. *See Jacobo Dreszer,* 76 FR 19386, 19387–88 (2011) (explaining that a respondent can ''argue that even though the Government has made out a *prima facie* case, his conduct was not so egregious as to warrant revocation''); *Paul H. Volkman,* 73 FR 30630, 30644 (2008); *see also Paul Weir Battershell,* 76 FR 44359, 44369 (2011) (imposing six-month suspension, noting that the evidence was not limited to security and recordkeeping violations found at first inspection and ''manifested a disturbing pattern of indifference on the part of [r]espondent to his obligations as a registrant''); *Gregory D. Owens,* 74 FR 36751, 36757 n.22 (2009). As explained above, Respondent's misconduct in knowingly issuing multiple prescriptions in violation of 21 CFR 1306.04(a) is egregious and supports the denial of his registration and not the issuance of a registration subject to conditions. Indeed, this is not a close call.

[62] Even if Respondent had credibly accepted responsibility for his misconduct, he has offered no evidence of any remedial training he has undertaken in controlled substance prescribing. While the CSA does not impose a time bar on a practitioner's ability to reapply for a registration, the rules of the Agency are clear. Thus, to obtain favorable consideration of any new application, Respondent must both credibly acknowledge his misconduct in prescribing to B.B. and provide evidence of remedial training he has undertaken in the proper prescribing of controlled substances.

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