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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No.: FAA–2013–0109; Amdt. No. 25–139]

RIN 2120–AK13

Harmonization of Airworthiness Standards—Miscellaneous Structures Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends certain airworthiness regulations for transport category airplanes, based on recommendations from the FAA-sponsored Aviation Rulemaking Advisory Committee (ARAC). This amendment eliminates regulatory differences between the airworthiness standards of the FAA and the European Aviation Safety Agency (EASA). This final rule does not add new requirements beyond what manufacturers currently meet for EASA certification and does not affect current industry design practices. This final rule revises the structural test requirements necessary when analysis has not been found reliable; clarifies the quality control, inspection, and testing requirements for critical and non-critical castings; adds control system requirements that consider structural deflection and vibration loads; expands the fuel tank structural and system requirements regarding emergency landing conditions and landing gear failure conditions; adds a requirement that engine mount failure due to overload must not cause hazardous fuel spillage; and revises the inertia forces requirements for cargo compartments by removing the exclusion of compartments located below or forward of all occupants in the airplane.

DATES: Effective December 1, 2014.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How to Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Todd Martin, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1178; facsimile (425) 227–1232; email *Todd.Martin@faa.gov.*

For legal questions concerning this action, contact Sean Howe, Office of the Regional Counsel, ANM–7, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2591; facsimile (425) 227–1007; email *Sean.Howe@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on 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 III, Section 44701, ''General Requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for the design and performance of aircraft that the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority. It prescribes new safety standards for the design of transport category airplanes.

I. Overview of Final Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) 25.307(a), 25.621, 25.683, 25.721, 25.787(a), 25.963(d), and 25.994 as described below. This action harmonizes part 25 requirements with the corresponding requirements in Book 1 of the EASA Certification Specifications and Acceptable Means of Compliance for Large Aeroplanes (CS–25).

1. Section 25.307(a), ''Proof of structure,'' currently requires structural strength testing, unless the applicant has demonstrated that analysis alone is reliable. Paragraph (a) is revised to clarify the load levels to which testing is required, when such testing is required.

2. Section 25.621, ''Casting factors,'' is revised to clarify the quality control, inspection, and testing requirements for critical and non-critical castings.

3. Section 25.683, ''Operation tests,'' is revised to add a requirement that—

- The control system must remain free from jamming, friction, disconnection, and permanent damage in the presence of structural deflection and
- Under vibration loads, no hazard may result from interference or contact of the control system with adjacent elements.

4. Section 25.721, ''Landing Gear—General,'' is revised to—

- Expand the landing gear failure conditions to include side loads, in addition to up and aft loads, and expand this requirement to include nose landing gear in addition to the main landing gear,
- Specify that the wheels-up landing conditions are assumed to occur at a descent rate of 5 feet per second,
- Add a sliding-on-ground condition, and
- Require the engine mount be designed so that, when it fails due to overload, this failure does not cause the spillage of enough fuel to constitute a fire hazard.

5. Section 25.787, ''Stowage compartments,'' is revised to expand the inertia forces requirements for cargo compartments by removing the exclusion of compartments located below or forward of all occupants in the airplane.

6. Section 25.963, ''Fuel tanks: general,'' is revised to—

- Require that fuel tanks be designed so that no fuel is released in or near the fuselage, or near the engines, in quantities that would constitute a fire hazard in otherwise survivable emergency landing conditions,
- Define fuel tank pressure loads for fuel tanks located within and outside the fuselage pressure boundary and near the fuselage or near the engines, and

• Specify the wheels-up landing conditions and landing gear and engine mount failure conditions that must be considered when evaluating fuel tank structural integrity.

7. Section 25.994, ''Fuel system components,'' is revised to specify the wheels-up landing conditions to be considered when evaluating fuel system components.

II. Background

A. Statement of the Problem

Part 25 of 14 CFR prescribes airworthiness standards for type certification of transport category airplanes, for products certified in the United States. EASA CS–25 Book 1 prescribes the corresponding airworthiness standards for products certified in Europe. While part 25 and CS–25 Book 1 are similar, they differ in several respects. To resolve those differences, the FAA tasked ARAC through the Loads and Dynamics Harmonization Working Group (LDHWG) and the General Structures Harmonization Working Group (GSHWG) to review existing structures regulations and recommend changes that would eliminate differences between the U.S. and European airworthiness standards. The LDHWG and GSHWG developed recommendations, which EASA has incorporated into CS–25 with some changes. The FAA agrees with the ARAC recommendations as adopted by EASA, and this final rule amends part 25 accordingly.

B. Summary of the NPRM

On February 14, 2013, the FAA issued a Notice of Proposed Rulemaking (NPRM), Notice No. 25–137, Docket No. FAA–2013–0109, to amend §§ 25.307(a), 25.621, 25.683, 25.721, 25.787(a), 25.963(d), and 25.994. That NPRM was published in the **Federal Register** on March 1, 2013 (78 FR 13835). (The NPRM Notice No. was corrected to ''13–03'' in the **Federal Register** on April 16, 2014 (79 FR 21413)). In the NPRM, the FAA proposed to (1) revise the structural test requirements necessary when analysis has not been found reliable; (2) clarify the quality control, inspection, and testing requirements for critical and non-critical castings; (3) add control system requirements that consider structural deflection and vibration loads; (4) expand the fuel tank structural and system requirements regarding emergency landing conditions and landing gear failure conditions; (5) add a requirement that engine mount failure due to overload must not cause hazardous fuel spillage; and (6) revise the inertial forces requirements for cargo compartments by removing the exclusion of compartments located below or forward of all occupants in the airplane. The FAA proposed these changes to eliminate regulatory differences between the airworthiness standards of the FAA and EASA. The NPRM comment period closed on May 30, 2013.

C. General Overview of Comments

The FAA received 16 comments from 5 commenters. All commenters generally support the proposal, but they suggested changes discussed more fully below. The FAA received comments on each of the sections being changed, as follows:

- Section 25.307(a)—four comments
- Section 25.621—four comments
- Section 25.683—one comment
- Section 25.721—one comment
- Section 25.787(a)—two comments
- Section 25.963(d)—three comments
- Section 25.994—one comment

III. Discussion of Public Comments and Final Rule

A. Section 25.307, Proof of Structure

In the NPRM, the FAA proposed revising paragraph (a) of § 25.307 to require that, when structural analysis has not been shown to be reliable, substantiating tests must be made to load levels that are sufficient to verify structural behavior up to limit and ultimate loads of § 25.305.

One commenter stated that § 25.305 includes both limit and ultimate loads, so it is unclear which ''loads'' were intended by this change. More importantly, ''up to'' could mean any load level below limit or below ultimate and as such is indefinite. For example, an applicant could choose a load level of 10 percent of limit load and be in compliance with the proposed rule. The commenter proposed changing ''up to loads specified in § 25.305'' to ''at least limit load as specified in § 25.305.''

The FAA believes the wording proposed in the NPRM is correct, and no change is necessary. The phrase ''up to'' does not apply to the test load level; it applies to the design load level—the loads specified in § 25.305, including ultimate loads—which must be verified. The intent of the rule is that, when analysis has not been shown to be reliable, tests must be conducted to ''sufficient'' load levels. Normally, testing to ultimate load levels is required, but when previous relevant test evidence can be used to support the analysis, a lower level of testing may be accepted. The rule allows this intermediate level of testing. Advisory Circular (AC) 25.307–1, ''Proof of Structure,'' which the FAA is issuing concurrently with the final rule, provides detailed guidance on means of compliance with the rule.

Another commenter recommended changing the word ''reliable'' in the proposed rule to ''dependable and conservative.'' The term ''reliable'' has been in place since this rule was originally published in 1965. As stated in the NPRM, while the rule has changed, the rule intent remains the same. We believe ''reliable'' is appropriate and clear, and no change is necessary.

The same commenter also recommended noting that, where justified, test load levels may be less than ultimate. We do not believe this change is necessary because it is already expressed in the rule that substantiating tests must be made to load levels that are sufficient to verify structural behavior up to loads specified in § 25.305.

The same commenter also recommended the FAA add further explanation about the absolute need to validate models and when lack of validation might be acceptable. We do not believe it is necessary to revise the rule to address validation, since that subject relates to the acceptability of an applicant's showing of compliance rather than to the airworthiness standard itself. This subject is thoroughly addressed in the accompanying AC 25.307–1. We have not revised the final rule in this regard.

B. Section 25.621, Casting Factors

With this rulemaking, the FAA clarifies ''critical castings'' as each casting whose failure could preclude continued safe flight and landing of the airplane or could result in serious injury to occupants. One commenter agreed that improved foundry methods have resulted in higher quality castings but not to the point where a casting factor less than 1.25 is justified. The commenter recommended to either (1) eliminate the option for casting factors of 1.0 for critical castings, or (2) ensure that the characterization of material properties that are equivalent to those of wrought alloy products of similar composition includes the effect of defects in the static strength, fatigue, and damage tolerance requirements. The commenter provided the following examples of defects that could affect material properties: shell defects, hard-alpha contamination, shrink, porosity, weld defects, grain size, hot tears, incomplete densifications, and prior particle boundaries, among others.

The FAA does not agree with the commenter's first recommendation to eliminate the option for using a casting factor of 1.0 for critical castings. The criteria specified in the final rule will ensure product quality that is sufficient to justify using a casting factor of 1.0. According to the rule, to qualify for a casting factor of 1.0, the applicant must demonstrate, through process qualification, proof of product, and process monitoring, that the casting has coefficients of variation of the material properties that are equivalent to those of wrought alloy products of similar composition. The rule requires process monitoring that includes testing of coupons and, on a sampling basis, coupons cut from critical areas of production castings. In addition, the applicant must inspect 100 percent of the casting surface of each casting, as well as structurally significant internal areas and areas where defects are likely to occur. The applicant must also test one casting to limit and ultimate loads. The purpose of the minimum casting factor of 1.25 in the current rule is to increase the strength of the casting to account for variability in the casting process. In the final rule, the additional process, inspection, and test requirements required to use a casting factor less than 1.25 ensure a more consistent product and maintain the same level of safety as the existing standards. AC 25.621–1, ''Casting Factors,'' provides detailed guidance on the premium casting process necessary to allow a casting factor of 1.0, and the FAA is issuing that AC concurrently with this final rule.

The FAA partially agrees with the commenter's second recommendation, which is to ensure that the characterization of material properties that are equivalent to those of wrought alloy products of similar composition includes the effect of defects in the static strength, fatigue, and damage tolerance requirements. The rule requires that the characterization of material properties includes the effect of defects with regard to static strength. If any type of defect is discovered during process qualification, proof of product, or process monitoring, or by any inspection or static strength test, such that the coefficients of variation of the material properties are not equivalent to those of wrought alloy products of similar composition, then that casting would not qualify for a casting factor of 1.0. These defects include each of the examples identified by the commenter, as well as any other type of defect that could affect material properties. In addition, as noted previously, AC 25.621–1, which the FAA is issuing concurrently with the final rule, provides detailed guidance on the premium casting process necessary to allow a casting factor of 1.0. The AC includes reference to and addresses defects as proposed by the commenter.

We do not, however, agree that the characterization of material properties to determine the appropriate casting factor should include the effect of defects on fatigue and damage tolerance properties. Since casting factors apply only to strength requirements, rather than fatigue and damage tolerance requirements, the comparison of cast material to wrought material should only be based on material strength properties, rather than fatigue and damage tolerance characteristics.

Section 25.621(c)(2)(ii)(B) specifies a factor of 1.15 be applied to limit load test values to allow an applicant to use a casting factor of 1.25. Section 25.621(c)(3)(ii)(B) also specifies a factor of 1.15 be applied to limit load test values to allow a casting factor of 1.5. One commenter recommended that the 1.15 test factor in § 25.621(c)(3)(ii)(B) be scaled up by a factor of 1.2 (1.5/1.25), so as to align with the corresponding ultimate requirement. The 1.15 limit load test factor in § 25.621(c)(3)(ii)(B) would then be 1.38 (i.e., $1.5/1.25 \times 1.15$; 1.15 being required already in conjunction with the 1.25 casting factor for ultimate).

The FAA does not agree that for critical castings with a casting factor of 1.25 or 1.5, the limit load test factor should be linked to the ultimate load test factor. The ultimate and limit load tests have different purposes. The ultimate load test confirms ultimate load capability, while the limit load test confirms that no deformation will occur up to a much lower load level. Therefore, we see no reason to link the two test factors, and we believe the 1.15 factor specified in § 25.621(c)(3)(ii)(B) is appropriate, as recommended by ARAC and as currently specified in EASA CS 25.621.

The same commenter recommended modifying § 25.621(c) by adding a reference to § 25.305 for clarity—that each critical casting must have a factor associated with it for showing compliance with the strength and deformation requirement ''of § 25.305.'' We agree and have revised the final rule as recommended.

The same commenter noted that § 25.621 only refers to static testing and does not include any requirements for fatigue testing. The commenter stated that critical castings should also comply with § 25.571 concerning fatigue and damage tolerance. The commenter recommended including information to remind manufacturers of this requirement. The FAA agrees with the commenter that § 25.571 applies to critical castings. We believe the current wording in § 25.571 and the new wording in § 25.621 is sufficiently clear on this point, and no changes to these requirements are necessary.

No other public comments were received on § 25.621. However, after further FAA review, we revised the rule in several places to specify ''visual inspection and liquid penetrant or equivalent inspection methods.'' This change is to clarify ''equivalent inspection methods'' refers to the liquid penetrant inspection, and not the visual inspection. Although there is some textual difference between this and CS 25.621, there is no substantive difference between the two harmonized rules.

C. Section 25.683, Operation Tests

A commenter noted that the control systems to which § 25.683(b) applies are those control systems that obtain the pitch, roll, and yaw limit maneuver loads of the airplane structure. For example, an applicant must take into account the elevator, rudder, and aileron because these control surfaces obtain the referenced maneuver loads, while high lift systems do not need to be considered under § 25.683(b). The commenter suggested that we clarify this in the preamble to the final rule. The FAA agrees and hereby clarifies that § 25.683 only applies to those control systems that are loaded to obtain the specified maneuver loads. No change to the final rule text is necessary.

No other public comments were received on § 25.683. We would like to explain what is meant by ''where necessary'' as used in § 25.683(b). The rule states: ''It must be shown by analysis and, *where necessary,* by tests, that in the presence of deflections of the airplane structure,'' the control system operates without jamming, excessive friction, or permanent damage. The FAA may accept analysis alone to comply with this requirement. However, the FAA or the applicant may determine that, in certain cases, some testing is necessary to verify the analysis. For example, some testing may be necessary if the structure or control system is significantly more complex than a previous design, or if the analysis shows areas where the control system could be susceptible to jamming, friction, disconnection or damage. Testing may include component testing or full-scale tests.

D. Section 25.721, Landing Gear—General

A commenter proposed to add a paragraph (d) to § 25.721 to state that the conditions in paragraphs (a) through (c) must be considered regardless of the corresponding probabilities. The FAA does not believe this addition is necessary. The various failure conditions in the rule are stated directly, and the FAA intended no implication that the probability of these failure conditions may be taken into account. However, because the FAA proposed that a failure mode *not be likely* to cause the spillage of enough fuel to constitute a fire hazard, the proposal may have implied that an applicant should take probability into account to determine whether the failure conditions would lead to fuel spillage. The FAA did not intend this. Probability should not be taken into account to determine whether the failure mode will lead to fuel spillage.

No other public comments were received on § 25.721. However, after further FAA review, we revised § 25.721(b) to clarify its intent. We removed the phrase ''as separate conditions,'' which was proposed in § 25.721(b)(1)(i) and (b)(2)(i), because we believe that phrase is confusing. In § 25.721(b)(1)(ii) and (b)(2)(ii), we also changed the proposed phrase ''any other combination of landing gear legs not extended'' to ''any one or more landing gear legs not extended'' which is the same phrase used in § 25.721(b) at Amendment 25–32. We made this change to ensure that applicants are required to address every possible combination of landing gear legs not extended, including single landing gear legs not extended. This is consistent with the way EASA has applied its rule.

Both §§ 25.721(b) and 25.994 final rules use the phrase ''wheels-up landing.'' This phrase has been used in § 25.994 since that rule was adopted at Amendment 25–23. A ''wheels-up landing'' includes every possible combination of landing gear legs not extended, including single landing gear legs not extended, and all gears fully retracted.

E. Section 25.787, Stowage Compartments

To date, § 25.787(a) has required that cargo compartments be designed to the emergency landing conditions of § 25.561(b), but excluded compartments located below or forward of all occupants in the airplane. The FAA now revises § 25.787(a) to include compartments located below or forward of all occupants in the airplane. This change would ensure that, in these compartments, inertia forces in the up and aft direction will not injure passengers, and inertia forces in any direction will not cause penetration of fuel tanks or lines, or cause other hazards.

A commenter recommended revising the text to clarify that only those specific emergency landing conditions that would result in one of the three listed effects need to be considered. The FAA agrees, and we have revised the text to clarify this intent.

The same commenter suggested that fires only need to be protected against if they can result in injury to occupants, and the rule text should be revised to clarify that intent. The FAA does not agree that fires only need to be protected against if they can result in injury to occupants. The FAA believes that the wording proposed in the NPRM is correct, and no change is necessary. The requirement intends protection against any fire or explosion on the airplane. Although the FAA agrees the objective of the rule is to prevent injuries to occupants, the FAA considers any fuel tank fire or explosion in an otherwise survivable landing as potentially injury-causing.

F. Section 25.963, Fuel Tanks: General

One commenter suggested that exactly the same wording be used in § 25.963(d) and CS 25.963(d). EASA CS 25.963(d) requires that no fuel be released in quantities ''sufficient to start a serious fire'' in otherwise survivable emergency landing conditions. Proposed § 25.963(d) would have required that no fuel be released in quantities ''that would constitute a fire hazard.'' The FAA stated in the NPRM that the two phrases have the same meaning, and that proposed § 25.963(d) was more consistent with the wording of the other related sections.

The FAA is adopting the wording proposed in the NPRM as more appropriate. As noted in the NPRM, the two phrases have the same meaning, and the latter phrase is consistent with the wording in CS 25.721/§ 25.721, CS 25.963(d)(4)/§ 25.963(d)(4), and CS 25.994/§ 25.994. In addition, EASA agrees with and supports the NPRM. In recent special conditions, the FAA has defined a hazardous fuel leak as ''a running leak, a dripping leak, or a leak that, 15 minutes after wiping dry, results in a wetted airplane surface exceeding 6 inches in length or diameter.'' We regard this as an appropriate definition of the amount of fuel that would ''constitute a fire hazard'' as specified in §§ 25.721, 25.963, and 25.994.

Another commenter suggested modifying § 25.963(d)(5) to reference landing gear before engine mounts in the rule text, since these are referred to respectively in § 25.721(a) and (c). The FAA agrees and the recommended change has been made.

EASA CS 25.963(e)(2) provides the fire protection criteria for fuel tank access covers. A commenter recommended that § 25.963(e)(2) be revised to match CS 25.963(e)(2), which the commenter believes is clearer. The FAA notes that this paragraph was not addressed in the NPRM and so will not be addressed in this final rule. The FAA might consider harmonizing this paragraph in the future.

No other public comments were received on § 25.963. However, after further FAA review, we determined that further explanation of the various requirements in § 25.963(d) would be beneficial. Section 25.963(d), as revised by Amendment 25-**, requires that ''Fuel tanks must, so far as it is practicable, be designed, located, and installed so that no fuel is released in or near the fuselage, or near the engines, in quantities that would constitute a fire hazard in otherwise survivable emergency landing conditions. . . .'' In addition to this primary requirement, § 25.963(d)(1) through (d)(5) provide minimum quantitative criteria. Survivable landing conditions may occur that exceed, or are not captured by, the conditions specified in § 25.963(d)(1) through (d)(5). Therefore, to meet the introductory requirement in § 25.963(d), every practicable consideration should be made to ensure protection of fuel tanks in more severe crash conditions, especially tanks located in the fuselage below the main cabin floor.

The fuel tank pressure loads specified in § 25.963(d) vary depending on whether the fuel tank is within or outside the pressure boundary. For certification of unpressurized airplanes, all fuel tanks should be considered to be ''within'' the fuselage pressure boundary, unless a fire resistant barrier exists between the fuel tank and the occupied compartments of the airplane.

Finally, the FAA notes that, for future rulemaking, we plan to consider specific crashworthiness requirements that would exceed the quantitative criteria specified in §§ 25.561, 25.721, and 25.963. Also, the FAA has recently applied special conditions on certain airplanes that require a crashworthiness evaluation at descent rates up to 30 feet per second.

G. Section 25.994, Fuel System Components

To date, § 25.994 has required that fuel system components in an engine nacelle or in the fuselage be protected from damage that could result in spillage of enough fuel to constitute a fire hazard as a result of a wheels-up landing on a paved runway. We proposed to revise § 25.994 to specify that the wheels-up landing conditions that must be considered are those prescribed in § 25.721(b).

A commenter proposed two changes to what the FAA proposed: (1) Add a reference to § 25.721(c), and (2) change the order in which the nacelles and the fuselage are referenced, based on the order the fuselage and nacelle are addressed in § 25.721. We do not agree with the proposed changes. Adding a reference to § 25.721(c) would not be correct because wheels-up landing conditions are only listed in § 25.721(b). Since § 25.721(c) is not referenced in § 25.994, and since § 25.721(b) does not refer to the fuselage or nacelles, there is no reason to change the order in which the fuselage and nacelles are specified in § 25.994.

H. Advisory Material

On March 13, 2013, the FAA published and solicited public comments on three proposed ACs that describe acceptable means for showing compliance with the proposed regulations in the NPRM. The comment period for the proposed ACs closed on June 14, 2013. Concurrently with this final rule, the FAA is issuing the following new ACs to provide guidance material for the regulations adopted by this amendment:

- AC 25–30, ''Fuel Tank Strength in Emergency Landing Conditions.'' (AC 25–30 would provide guidance for the fuel tank structural integrity requirements of §§ 25.561, 25.721, and 25.963.)
- AC 25.307–1, ''Proof of Structure.''
- AC 25.621–1, ''Casting Factors.''

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

The FAA is amending certain airworthiness standards for transport category airplanes. Adopting this final rule would eliminate regulatory differences between the airworthiness standards of the FAA and the EASA. This final rule does not add new requirements as U.S. manufacturers currently meet EASA requirements. Meeting two sets of certification requirements imposes greater costs for developing new transport category airplanes with little to no increase in safety. In the interest of fostering international trade, lowering the cost of manufacturing new transport category airplanes, and making the certification process more efficient, the FAA, EASA, and several industry working groups came together to create, to the maximum extent possible, a single set of certification requirements that would be accepted in both the United States and Europe. Therefore, as a result of these harmonization efforts, the FAA is amending the airworthiness regulations described in section I of this final rule, ''Overview of the Final Rule.'' This action harmonizes part 25 requirements with the corresponding requirements in EASA CS–25 Book 1.

In order to sell their aircraft in Europe, all manufacturers of transport category airplanes, certificated under part 25 must be in compliance with the EASA certification requirements in CS–25 Book 1. Since future certificated transport airplanes are expected to meet CS–25 Book 1, and this rule simply adopts the same EASA requirements, manufacturers will incur minimal or no additional cost resulting from this final rule. Therefore, the FAA estimates that there are no additional costs associated with this final rule.

In fact, manufacturers could receive cost savings because they will not have to build and certificate transport category airplanes to two different authorities' certification specifications and rules. Further, harmonization of these airworthiness standards, specifically § 25.621 may benefit manufacturers by providing another option in developing aircraft structures. The final rule permits use of a lower casting factor for critical castings, provided that tight controls are established for the casting process, inspection, and testing, which lead to cost savings in terms of aircraft weight. These additional controls are expected to at least maintain an equivalent level of safety as provided by existing regulations for casting factors.

The FAA has not attempted to quantify the cost savings that may accrue from this final rule, beyond noting that, while they may be minimal, they contribute overall to a potential harmonization savings. The agency concludes that because the compliance cost for this final rule is minimal and there may be harmonization cost savings, further analysis is not required.

During the public comment period, the Agency received 16 comments from 5 commenters. There were no comments regarding costs to this final rule; however, one commenter raised concern for safety in § 25.621. Details of this comment and the FAA's response can be found in the ''General Overview of Comments'' section. These harmonization efforts ensure that the current level of safety in transport category airplanes is maintained while encouraging the use of modern casting process technology.

The agency concludes that the changes would eliminate regulatory differences between the airworthiness standards of the FAA and EASA resulting in potential cost savings and maintaining current levels of safety. The FAA has, therefore, determined that this final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify, and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this final rule does not have a significant economic impact on a substantial number of small entities for the following reasons. The net effect of this final rule is minimum regulatory cost relief, as the rule would adopt EASA requirements that the industry already meets. Further, all United States transport category aircraft manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees. The Agency received no comments regarding the Regulatory Flexibility Act during the public comment period.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it is in accord with the Trade Agreements Act as the final rule uses European standards as the basis for United States regulation.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $151 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

(1) In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

(2) Executive Order (EO) 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policy and agency responsibilities of Executive Order 13609, Promoting International Regulatory Cooperation. The agency has determined that this action would eliminate differences between U.S. aviation standards and those of other civil aviation authorities by creating a single set of certification requirements for transport category airplanes that would be acceptable in both the United States and Europe.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f of Order 1050.1E and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*),

2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/,* or

3. Access the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, and 44704.

■ 2. Amend § 25.307 by revising paragraph (a) to read as follows:

§ 25.307 Proof of structure.

(a) Compliance with the strength and deformation requirements of this subpart must be shown for each critical loading condition. Structural analysis may be used only if the structure conforms to that for which experience has shown this method to be reliable. In other cases, substantiating tests must be made to load levels that are sufficient to verify structural behavior up to loads specified in § 25.305.

* * * * *

■ 3. Amend § 25.621 by revising paragraphs (a), (c), and (d) to read as follows:

§ 25.621 Casting factors.

(a) *General.* For castings used in structural applications, the factors, tests, and inspections specified in paragraphs (b) through (d) of this section must be applied in addition to those necessary to establish foundry quality control. The inspections must meet approved specifications. Paragraphs (c) and (d) of this section apply to any structural castings, except castings that are pressure tested as parts of hydraulic or other fluid systems and do not support structural loads.

* * * * *

(c) *Critical castings.* Each casting whose failure could preclude continued safe flight and landing of the airplane or could result in serious injury to occupants is a critical casting. Each critical casting must have a factor associated with it for showing compliance with strength and deformation requirements of § 25.305, and must comply with the following criteria associated with that factor:

(1) A casting factor of 1.0 or greater may be used, provided that—

(i) It is demonstrated, in the form of process qualification, proof of product, and process monitoring that, for each casting design and part number, the castings produced by each foundry and process combination have coefficients of variation of the material properties that are equivalent to those of wrought alloy products of similar composition. Process monitoring must include testing of coupons cut from the prolongations of each casting (or each set of castings, if produced from a single pour into a single mold in a runner system) and, on a sampling basis, coupons cut from critical areas of production castings. The acceptance criteria for the process monitoring inspections and tests must be established and included in the process specifications to ensure the properties of the production castings are controlled to within levels used in design.

(ii) Each casting receives:

(A) Inspection of 100 percent of its surface, using visual inspection and liquid penetrant or equivalent inspection methods; and

(B) Inspection of structurally significant internal areas and areas where defects are likely to occur, using radiographic or equivalent inspection methods.

(iii) One casting undergoes a static test and is shown to meet the strength and deformation requirements of § 25.305(a) and (b).

(2) A casting factor of 1.25 or greater may be used, provided that—

(i) Each casting receives:

(A) Inspection of 100 percent of its surface, using visual inspection and liquid penetrant or equivalent inspection methods; and

(B) Inspection of structurally significant internal areas and areas where defects are likely to occur, using radiographic or equivalent inspection methods.

(ii) Three castings undergo static tests and are shown to meet:

(A) The strength requirements of § 25.305(b) at an ultimate load corresponding to a casting factor of 1.25; and

(B) The deformation requirements of § 25.305(a) at a load of 1.15 times the limit load.

(3) A casting factor of 1.50 or greater may be used, provided that—

(i) Each casting receives:

(A) Inspection of 100 percent of its surface, using visual inspection and liquid penetrant or equivalent inspection methods; and

(B) Inspection of structurally significant internal areas and areas where defects are likely to occur, using radiographic or equivalent inspection methods.

(ii) One casting undergoes a static test and is shown to meet:

(A) The strength requirements of § 25.305(b) at an ultimate load corresponding to a casting factor of 1.50; and

(B) The deformation requirements of § 25.305(a) at a load of 1.15 times the limit load.

(d) *Non-critical castings.* For each casting other than critical castings, as

specified in paragraph (c) of this section, the following apply:

(1) A casting factor of 1.0 or greater may be used, provided that the requirements of (c)(1) of this section are met, or all of the following conditions are met:

(i) Castings are manufactured to approved specifications that specify the minimum mechanical properties of the material in the casting and provides for demonstration of these properties by testing of coupons cut from the castings on a sampling basis.

(ii) Each casting receives:

(A) Inspection of 100 percent of its surface, using visual inspection and liquid penetrant or equivalent inspection methods; and

(B) Inspection of structurally significant internal areas and areas where defects are likely to occur, using radiographic or equivalent inspection methods.

(iii) Three sample castings undergo static tests and are shown to meet the strength and deformation requirements of § 25.305(a) and (b).

(2) A casting factor of 1.25 or greater may be used, provided that each casting receives:

(i) Inspection of 100 percent of its surface, using visual inspection and liquid penetrant or equivalent inspection methods; and

(ii) Inspection of structurally significant internal areas and areas where defects are likely to occur, using radiographic or equivalent inspection methods.

(3) A casting factor of 1.5 or greater may be used, provided that each casting receives inspection of 100 percent of its surface using visual inspection and liquid penetrant or equivalent inspection methods.

(4) A casting factor of 2.0 or greater may be used, provided that each casting receives inspection of 100 percent of its surface using visual inspection methods.

(5) The number of castings per production batch to be inspected by non-visual methods in accordance with paragraphs (d)(2) and (3) of this section may be reduced when an approved quality control procedure is established.

■ 4. Revise § 25.683 to read as follows:

§ 25.683 Operation tests.

(a) It must be shown by operation tests that when portions of the control system subject to pilot effort loads are loaded to 80 percent of the limit load specified for the system and the powered portions of the control system are loaded to the maximum load expected in normal operation, the system is free from—

(1) Jamming;

(2) Excessive friction; and

(3) Excessive deflection.

(b) It must be shown by analysis and, where necessary, by tests, that in the presence of deflections of the airplane structure due to the separate application of pitch, roll, and yaw limit maneuver loads, the control system, when loaded to obtain these limit loads and operated within its operational range of deflections, can be exercised about all control axes and remain free from—

(1) Jamming;

(2) Excessive friction;

(3) Disconnection; and

(4) Any form of permanent damage.

(c) It must be shown that under vibration loads in the normal flight and ground operating conditions, no hazard can result from interference or contact with adjacent elements.

■ 5. Revise § 25.721 to read as follows:

§ 25.721 General.

(a) The landing gear system must be designed so that when it fails due to overloads during takeoff and landing, the failure mode is not likely to cause spillage of enough fuel to constitute a fire hazard. The overloads must be assumed to act in the upward and aft directions in combination with side loads acting inboard and outboard. In the absence of a more rational analysis, the side loads must be assumed to be up to 20 percent of the vertical load or 20 percent of the drag load, whichever is greater.

(b) The airplane must be designed to avoid any rupture leading to the spillage of enough fuel to constitute a fire hazard as a result of a wheels-up landing on a paved runway, under the following minor crash landing conditions:

(1) Impact at 5 feet-per-second vertical velocity, with the airplane under control, at Maximum Design Landing Weight—

(i) With the landing gear fully retracted; and

(ii) With any one or more landing gear legs not extended.

(2) Sliding on the ground, with—

(i) The landing gear fully retracted and with up to a 20° yaw angle; and

(ii) Any one or more landing gear legs not extended and with 0° yaw angle.

(c) For configurations where the engine nacelle is likely to come into contact with the ground, the engine pylon or engine mounting must be designed so that when it fails due to overloads (assuming the overloads to act predominantly in the upward direction and separately, predominantly in the aft direction), the failure mode is not likely to cause the spillage of enough fuel to constitute a fire hazard.

■ 6. Amend § 25.787 by revising paragraph (a) to read as follows:

§ 25.787 Stowage compartments.

(a) Each compartment for the stowage of cargo, baggage, carry-on articles, and equipment (such as life rafts), and any other stowage compartment, must be designed for its placarded maximum weight of contents and for the critical load distribution at the appropriate maximum load factors corresponding to the specified flight and ground load conditions, and to those emergency landing conditions of § 25.561(b)(3) for which the breaking loose of the contents of such compartments in the specified direction could—

(1) Cause direct injury to occupants;

(2) Penetrate fuel tanks or lines or cause fire or explosion hazard by damage to adjacent systems; or

(3) Nullify any of the escape facilities provided for use after an emergency landing.

If the airplane has a passenger-seating configuration, excluding pilot seats, of 10 seats or more, each stowage compartment in the passenger cabin, except for under seat and overhead compartments for passenger convenience, must be completely enclosed.

* * * * *

■ 7. Amend § 25.963 by revising paragraph (d) to read as follows:

§ 25.963 Fuel tanks: general.

* * * * *

(d) Fuel tanks must, so far as it is practicable, be designed, located, and installed so that no fuel is released in or near the fuselage, or near the engines, in quantities that would constitute a fire hazard in otherwise survivable emergency landing conditions, and—

(1) Fuel tanks must be able to resist rupture and retain fuel under ultimate hydrostatic design conditions in which the pressure P within the tank varies in accordance with the formula:

$$P = K\rho g L$$

Where—

P = fuel pressure at each point within the tank

ρ = typical fuel density

g = acceleration due to gravity

L = a reference distance between the point of pressure and the tank farthest boundary in the direction of loading

K = 4.5 for the forward loading condition for those parts of fuel tanks outside the fuselage pressure boundary

K = 9 for the forward loading condition for those parts of fuel tanks within the fuselage pressure boundary, or that form part of the fuselage pressure boundary

K = 1.5 for the aft loading condition

K = 3.0 for the inboard and outboard loading conditions for those parts of fuel tanks

within the fuselage pressure boundary, or that form part of the fuselage pressure boundary

K = 1.5 for the inboard and outboard loading conditions for those parts of fuel tanks outside the fuselage pressure boundary

K = 6 for the downward loading condition

K = 3 for the upward loading condition

(2) For those parts of wing fuel tanks near the fuselage or near the engines, the greater of the fuel pressures resulting from paragraphs (d)(2)(i) or (d)(2)(ii) of this section must be used:

(i) The fuel pressures resulting from paragraph (d)(1) of this section, and

(ii) The lesser of the two following conditions:

(A) Fuel pressures resulting from the accelerations specified in § 25.561(b)(3) considering the fuel tank full of fuel at maximum fuel density. Fuel pressures based on the 9.0g forward acceleration may be calculated using the fuel static head equal to the streamwise local chord of the tank. For inboard and outboard conditions, an acceleration of 1.5g may be used in lieu of 3.0g as specified in § 25.561(b)(3).

(B) Fuel pressures resulting from the accelerations as specified in § 25.561(b)(3) considering a fuel volume beyond 85 percent of the maximum permissible volume in each tank using the static head associated with the 85 percent fuel level. A typical density of the appropriate fuel may be used. For inboard and outboard conditions, an acceleration of 1.5g may be used in lieu of 3.0g as specified in § 25.561(b)(3).

(3) Fuel tank internal barriers and baffles may be considered as solid boundaries if shown to be effective in limiting fuel flow.

(4) For each fuel tank and surrounding airframe structure, the effects of crushing and scraping actions with the ground must not cause the spillage of enough fuel, or generate temperatures that would constitute a fire hazard under the conditions specified in § 25.721(b).

(5) Fuel tank installations must be such that the tanks will not rupture as a result of the landing gear or an engine pylon or engine mount tearing away as specified in § 25.721(a) and (c).

* * * * *

■ 8. Revise § 25.994 to read as follows:

§ 25.994 Fuel system components.

Fuel system components in an engine nacelle or in the fuselage must be protected from damage that could result in spillage of enough fuel to constitute a fire hazard as a result of a wheels-up landing on a paved runway under each of the conditions prescribed in § 25.721(b).

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on September 24, 2014.

Michael P. Huerta,

Administrator.

[FR Doc. 2014–23373 Filed 10–1–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–0366; Special Conditions No. 25–564–SC]

Special Conditions: Embraer S.A.; Model EMB–550 Airplane; Flight Envelope Protection: High Incidence Protection System

Correction

In rule document 2014–20893 appearing on pages 52165 through 52169 in the issue of Wednesday, September 3, 2014, make the following corrections:

1. On page 52169, in the first column, the 27th line from the bottom should read: ''In lieu of § 25.107(c) and (g) we propose the following requirements, with additional sections (c') and (g'):''

2. On page 52169, in the first column, the 11th line from the bottom should read: ''(c') In icing conditions with the ''takeoff ice'' accretion defined in part 25, appendix C, V2 may not be less than—''

3. On page 52169, in the second column, the eighth line from the top should read: ''(g') In icing conditions with the ''final takeoff ice'' accretion defined in part 25, appendix C, V_{FTO}, may not be less than—''

[FR Doc. C1–2014–20893 Filed 10–1–14; 8:45 am]

BILLING CODE 1505–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0848]

Drawbridge Operation Regulation; Sacramento River, Rio Vista, CA

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 Rio Vista Drawbridge across Sacramento River, mile 12.8, at Rio Vista, CA. The deviation is necessary to allow the bridge owner to make necessary bridge maintenance repairs. This deviation allows the bridge to open on four hours advance notice during the deviation period.

DATES: This deviation is effective without actual notice from October 2, 2014 through 6 a.m. on October 17, 2014. For the purposes of enforcement, actual notice will be used from 9 p.m. on September 22, 2014, until October 2, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0848], 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. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Rio Vista Drawbridge, mile 12.8, over Sacramento River, at Rio Vista, CA. The drawbridge navigation span provides 18 feet vertical clearance above Mean High Water in the closed-to-navigation position. In accordance with 33 CFR 117.5, the draw opens on signal. Navigation on the waterway is commercial, search and rescue, law enforcement, and recreational.

A four-hour advance notice for openings is required from 9 p.m. to 6 a.m. daily, from September 22, 2014 to October 17, 2014, to allow the bridge owner to repair the concrete vertical lift span deck. This temporary deviation has been coordinated with the waterway users. No objections to the temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at any time. The bridge will be able to open for emergencies with four hour advance notice. No alternative route is available for navigation. The Coast Guard will inform waterway users of

this temporary deviation via our Local and Broadcast Notices to Mariners, to minimize resulting navigational impacts.

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: September 15, 2014.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2014–23540 Filed 10–1–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0857]

Drawbridge Operation Regulation; Illinois River, Joliet, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Jefferson Street Drawbridge across the Illinois River, mile 287.9, at Joliet, Illinois. The deviation is necessary to allow the Fall Color 5K run to cross the bridge. This deviation allows the bridge to remain in the closed-to-navigation position and not open to vessel traffic for one hour.

DATES: This deviation is effective from 9 a.m. to 10 a.m., October 5, 2014.

ADDRESSES: The docket for this deviation, (USCG–2014–0857) 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. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314–269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Illinois Department of Transportation requested a temporary deviation for the Jefferson Street Drawbridge, across the Illinois River, mile 287.9, at Joliet, Illinois to remain in the closed-to-navigation position for 1 hour from 9 a.m. to 10 a.m. on October 5, 2014 in order to allow the Fall Color 5K run to cross the bridge.

The Jefferson Street Drawbridge currently operates in accordance with 33 CFR 117.393(c), which states the general requirement that the drawbridge shall open on signal except it need not open from 7:30 a.m. to 8:30 a.m. and from 4:15 p.m. to 5:15 p.m. Monday through Saturday.

There are no alternate routes for vessels transiting this section of the Illinois River.

The Jefferson Street Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 16.6 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft and will not be significantly impacted. This temporary deviation has been coordinated with waterway users. No objections were received.

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: September 19, 2014.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2014–23541 Filed 10–1–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0858]

Drawbridge Operation Regulation; Illinois River, Joliet, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Cass Street Drawbridge across the Illinois River, mile 288.1, at Joliet, Illinois. The deviation is necessary to allow the Fall Color 5K run to cross the bridge. This deviation allows the bridge to remain in the closed-to-navigation position and not open to vessel traffic for one hour.

DATES: This deviation is effective from 9 a.m. to 10 a.m., October 5, 2014.

ADDRESSES: The docket for this deviation, (USCG–2014–0858) 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. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314–269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Illinois Department of Transportation requested a temporary deviation for the Cass Street Drawbridge, across the Illinois River, mile 288.1, at Joliet, Illinois to remain in the closed-to-navigation position for 1 hour from 9 a.m. to 10 a.m. on October 5, 2014 in order to allow the Fall Color 5K run to cross the bridge.

The Cass Street Drawbridge currently operates in accordance with 33 CFR 117.393(c), which states the general requirement that the drawbridge shall open on signal except it need not open from 7:30 a.m. to 8:30 a.m. and from 4:15 p.m. to 5:15 p.m. Monday through Saturday.

There are no alternate routes for vessels transiting this section of the Illinois River.

The Cass Street Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 16.6 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft and will not be significantly impacted. This temporary deviation has been coordinated with waterway users. No objections were received.

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: September 19, 2014.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2014–23544 Filed 10–1–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0460; FRL–9915–37–Region 9]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern definitions that are necessary for the creation, modification and understanding of rules that address air pollution. Among other changes, the revised definitions help clarify federal New Source Review (NSR) requirements, update the districts' exempt volatile organic compounds list to correspond with EPA's, and improve formatting consistency. We are approving local rules that define terms under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on December 1, 2014 without further notice, unless EPA receives adverse comments by November 3, 2014. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0460, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, (415) 972–3024, *Lazarus.Arnold@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Revised/amended	Submitted
ICAPCD	101	Definitions	10/22/13	02/10/14
SJVUAPCD	1020	Definitions	02/21/13	02/10/14

On April 9, 2014 and May 5, 2014 respectively, EPA determined that the submittal for ICAPCD Rule 101 and SJVUAPCD Rule 1020 met the completeness criteria in 40 CFR part 51, Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There are previous versions of ICAPCD Rule 101 and SJVUAPCD Rule 1020 in the SIP. Most recently, on March 7, 2011 (76 FR 12280), we approved a version of ICAPCD Rule 101 that was adopted locally on February 23, 2010; and on August 28, 2009 (74 FR 44291), we approved a version of SJVUAPCD Rule 1020 that was adopted locally on January 15, 2009.

C. What is the purpose of the submitted rule revisions?

Section 110(a) of the CAA requires States to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were

developed as part of the local agency's program to control these pollutants.

Imperial County Rule 101 is being amended by adding new definitions, revising definitions for clarity, making various administrative changes, updating the exempt volatile organic compounds list to correspond with EPA's, and deleting two obsolete definitions. EPA's technical support document (TSD) has more detailed information about this rule.

SJVUAPCD amended Rule 1020 to add dimethyl carbonate (DMC) and propylene carbonate (PC) to the District's list of exempt compounds within the definition of VOC as a response to EPA findings that DMC and PC have a low potential to form ozone in the atmosphere. EPA's TSD has more detailed information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

These rules describe administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, these rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). EPA policy that we used to evaluate enforceability requirements consistently includes the Bluebook (''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988), the Little Bluebook (''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001), and ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSDs have more information on our evaluations.

C. EPA Recommendations To Further Improve the Rules

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by November 3, 2014, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 1, 2014. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 1, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule,

so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: July 25, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(442) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(442) New and amended regulations for the following APCDs were submitted on February 10, 2014 by the Governor's Designee.

(i) Incorporation by Reference.

(A) Imperial County Air Pollution Control District.

(*1*) Rule 101, ''Definitions,'' revised on October 22, 2013.

(B) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 1020, ''Definitions,'' amended on February 21, 2013.

* * * * *

[FR Doc. 2014–23400 Filed 10–1–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2013–0247; FRL–9917–38–Region 10]

Revision to the Idaho State Implementation Plan; Approval and Promulgation of Air Quality Implementation Plans: Idaho, Northern Ada County PM_{10} Second Ten-Year Maintenance Plan and Pinehurst PM_{10} Contingency Measures

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Northern Ada County PM_{10} Second Ten-Year Maintenance Plan submitted by the Idaho Department of Environmental Quality (IDEQ) on March 11, 2013, for particulate matter with an aerodynamic diameter less than or equal to ten micrometers (PM_{10}). Northern Ada County was identified as an area of concern for PM_{10} with the promulgation of the PM_{10} NAAQS in 1987, and was formally designated as a moderate PM_{10} nonattainment area upon passage of the 1990 Clean Air Act (CAA) amendments. In October 2003, the EPA approved the Northern Ada County PM_{10} Maintenance Plan and redesignated the area to attainment for PM_{10}. This revised Maintenance Plan addresses maintenance of the PM_{10} standard for a second ten-year period beyond redesignation through 2023, extends the horizon years, and contains revised transportation conformity budgets. The EPA is also approving the February 15–16, 2011 high wind exceptional event at the Boise Fire Station monitor, as well as contingency measures for the Pinehurst PM_{10} Air Quality Improvement Plan. The EPA is approving the second ten-year PM_{10} Maintenance Plan for Northern Ada County and the Pinehurst PM_{10} contingency measures pursuant to section 110 of the CAA. The EPA is approving the February 2011 exceptional event pursuant to 40 CFR 50.14. The EPA received one set of adverse comments focused primarily on proposed coal export terminals that may be built in Oregon and Washington that may affect Northern Ada County.

DATES: This final rule is effective on November 3, 2014.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2013–0247. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lucy Edmondson at (360)753–9082 or *Edmondson.lucy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

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II. Response to Comments
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

Northern Ada County was identified as an area of concern for PM_{10} with the promulgation of the PM_{10} NAAQS in 1987, and was formally designated as a moderate PM_{10} nonattainment area upon passage of the 1990 CAA amendments. Idaho developed a state implementation plan (SIP) and submitted it to the EPA in November 1991, later submitting revisions in December 1994 and July 1995. The EPA approved the Northern Ada County PM_{10} SIP on May 30, 1996 (61 FR 27019). Idaho submitted a maintenance plan and a request to redesignate the area to attainment on September 27, 2002, and provided supplemental information on July 10 and 21, 2003. On October 27, 2003, the EPA approved the Northern Ada County PM_{10} Maintenance Plan and redesignated the area to attainment status for PM_{10} (68 FR 61106).

In actions dated August 25, 1994 (59 FR 43475) and May 26, 1995 (60 FR 27891), the EPA conditionally approved the SIP for the Pinehurst, Idaho PM_{10} nonattainment area. The conditional approval concluded that IDEQ had not satisfied the requirement for contingency measures for both the City

of Pinehurst and the Pinehurst Expansion area. The EPA set a deadline of July 20, 1995 for IDEQ to submit the required contingency measures. IDEQ met the established deadline with its submission ''Contingency Measures for the Pinehurst PM_{10} Air Quality Improvement Plan,'' dated July 13, 1995.

On September 23, 2013, IDEQ submitted documentation in accordance with the Exceptional Events Rule (40 CFR 50.14) to demonstrate that the monitored PM_{10} values on February 15–16, 2011 at the Boise monitor were due to a high wind event and resulting dust storm that originated in Nevada. The EPA proposed approval of this maintenance plan and the Pinehurst Contingency Measures on February 20, 2014 (79 FR 9697).

II. Response to Comments

On March 24, 2014, the EPA received one set of comments opposing the EPA's proposed approval of Northern Ada County PM_{10} Second Ten-Year Maintenance Plan (Ada County PM_{10} plan). The comments were focused on the potential impact that possible coal export terminals, proposed to be built in the Pacific Northwest, could have on PM_{10} concentrations in the maintenance area. These comments are similar to comments previously submitted on February 22, 2013, related to emissions impacts of locomotive coal transport in the emissions inventory for the Tacoma fine particulate ($PM_{2.5}$) nonattainment area (78 FR 32131, May 29, 2013) and comments submitted on March 10, 2014, related to the Kent, Seattle, and Tacoma Second 10-Year PM_{10} Limited Maintenance Plan (79 FR 49239, August 20, 2014). The EPA responded to these comments in the May 29, 2013 and August 20, 2014 final rulemakings. Due to the specific focus of today's action, the EPA is only addressing those comments directly relevant to the Ada County PM_{10} plan.

A. Calculating Growth in Locomotive Traffic

Comment: The commenter requested that the EPA disapprove the Ada County PM_{10} plan because the plan relied on general growth factors in estimating future railroad traffic without consideration of future growth associated with proposed coal export terminals that may be built in Oregon and Washington.

Response: The EPA guidance regarding development of emissions inventories requires states to consider reasonably anticipated growth in emission sources such as increased vehicle miles traveled, population growth, and possible emissions growth at permitted stationary sources.[1] None of the projects in question are far enough along in their development that the scope or impact of their emissions can be estimated with any degree of certainty. In this case, the Washington State Environmental Policy Act (SEPA) and/or the National Environmental Policy Act (NEPA) processes for coal export proposals cited in the March 24, 2014 letter are ongoing. It is not known whether the facilities will be constructed, and if they are constructed, the size and scope of operations that would be authorized. In addition, as the commenter notes, there are several possible rail routes that could be used in the future and it is not known whether locomotive traffic associated with coal shipments would traverse or bypass the Ada County maintenance area or, as may be the case, whether routes would constantly vary based on decisions by the rail operator. Given the range of uncertainty surrounding the proposed terminals, including whether the terminals will be constructed, the location (s) of such terminals and decisions of terminal and railway operators that would affect rail routes, the EPA believes it would be unreasonable to disapprove the Ada County PM_{10} plan on the basis that the emissions inventory did not estimate potential future events that may or may not impact the maintenance area. Should any of these coal export facilities be built in the future, both the EPA and the State have the authority under the EPA's longstanding guidance regarding contingency measures to reexamine emissions inventories and establish additional control measures if a noticeable impact on PM_{10} levels in Ada County were to occur.[2]

B. Calculating Fugitive Dust Impacts From Coal Export Locomotive Traffic

Comment: The commenter noted Washington State's Kent, Seattle, and Tacoma Second 10-Year PM_{10} Limited Maintenance Plan submittal which included a calculation of estimated fugitive coal dust emissions as part of the 2011 baseline emissions inventory for that area (Docket No. EPA–R10–OAR–2013–0713)(Kent, Seattle, and Tacoma PM_{10} plan). The commenter requested that the EPA disapprove the Ada County PM_{10} plan because it did not contain a comparable estimate of fugitive coal dust emissions.

Response: A key difference between the Washington and Idaho plans is that there is already coal-related locomotive activity through the Washington maintenance areas on the way to export through Canada, captured as part of the 2011 baseline emissions inventory. The commenter provides no compelling evidence to suggest that Ada County experiences similar Canadian export traffic like Kent, Seattle, and Tacoma. Instead the commenter's focus is on proposed export terminals that may or may not be built in Oregon and Washington. As noted above, consideration of potential, future impacts of projects that may or may not be built is not a reasonable basis for disapproving the Ada County PM_{10} plan. The EPA also notes that the commenter raised several issues specific to the Kent, Seattle, and Tacoma PM_{10} plan fugitive dust estimation methodology which are not germane to the Ada County PM_{10} plan and therefore not addressed here.

Comment: The Commenter noted that modeling conducted by the Sierra Club of the potential impacts of the proposed Ambre Energy Coyote Island Terminal in Morrow predicts elevated $PM_{2.5}$ emissions. The commenter indicates that results for $PM_{2.5}$ could be assumed to be PM_{10} and that this information is enough to conclude that there would be high levels of PM_{10} emissions that could result in exceedances in Ada County.

Response: The Tran Modeling analysis evaluated potential emissions from the proposed Ambre Energy Coyote Island Terminal in Morrow, Oregon and calculated emissions near the facility at values above the NAAQS. Given the uncertainty surrounding the proposed Morrow Terminal, including whether the facility will be constructed, the EPA believes it would be unreasonable to disapprove the Ada County PM_{10} Maintenance Plan on the basis of this modeling analysis. In addition, because the modeling predicts emission levels near the facility in Oregon, the EPA believes it is unreasonable to draw conclusions about how these emissions could affect Ada County, Idaho. Should this facility be built in the future, both the EPA and the state have the authority under the EPA's longstanding guidance regarding contingency measures to establish additional control measures if a noticeable impact on PM_{10} levels in Ada County were to occur.

[1] *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations*—EPA–454/R–05–001. August, 2005, updated November 2005 (hereafter ''emissions inventory guidance'' or ''guidance'').

[2] *Procedures for Processing Requests to Redesignate Areas to Attainment.* John Calcagni, Director, Air Quality Management Division to Regional Air Directors, September 4, 1992.

III. Final Action

The EPA is taking final action to approve the Northern Ada County PM_{10} Second Ten-Year Maintenance Plan and Pinehurst PM_{10} Contingency Measures. This action approves and incorporates into the SIP the PM_{10} control measures submitted by IDEQ on March 11, 2013 and July 13, 1995, respectively. The EPA is also approving the February 15–16, 2011 high wind exceptional event at the Boise Fire Station monitor. Provisions describing state or local enforcement authority are not incorporated into the SIP to avoid potential conflict with the EPA's independent authorities.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 1, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 11, 2014.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

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 N—Idaho

■ 2. In § 52.670, paragraph (e), the table entitled ''EPA–APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI–REGULATORY MEASURES'' is amended by adding two new entries at the end of the table.

The additions read as follows:

§ 52.670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Northern Ada County PM_{10} Second Ten-Year Maintenance Plan.	Northern Ada County	3/11/13	10/2/14 [Insert FR citation].	
Pinehurst PM_{10} Contingency Measures.	Pinehurst/Shoshone County ..	7/13/95	10/2/14 [Insert FR citation].	

■ 3. Section 52.672 is amended by revising paragraph (e)(2) and adding paragraph (e)(3) to read as follows:

§ 52.672 Approval of plans.

* * * * *

(e) * * *

(2) EPA approves as a revision to the Idaho State Implementation Plan, the Northern Ada County PM_{10} Second Ten-Year Maintenance Plan adopted by the State on March 11, 2013.

(3) EPA approves as a revision to the Idaho State Implementation Plan, the Pinehurst PM_{10} Contingency Measures, adopted by the State on July 13, 1995.

* * * * *

[FR Doc. 2014–23365 Filed 10–1–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA–R06–RCRA–2012–0793; FRL–9916–02–Region 6]

Arkansas: Final Authorization of State-Initiated Changes and Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: During a review of Arkansas' regulations, the Environmental Protection Agency (EPA) identified a variety of State-initiated changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). We have determined that these changes are minor and satisfy all requirements needed to qualify for Final authorization and are authorizing the State-initiated changes through this Direct Final action.

The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. The EPA uses the regulations entitled ''Approved State Hazardous Waste Management Programs'' to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that will be subject to the EPA's inspection and enforcement. The rule codifies in the regulations the prior approval of Arkansas' hazardous waste management program and incorporates by reference authorized provisions of the State's statutes and regulations.

DATES: This regulation is effective December 1, 2014, unless the EPA receives adverse written comment on the codification of the Arkansas authorized RCRA program by the close of business November 3, 2014. If the EPA receives such comments, it will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that this rule will not take effect. The incorporation by reference of authorized provisions in the Arkansas statutes and regulations contained in this rule is approved by the Director of the **Federal Register** as of December 1, 2014 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2 *Email: patterson.alima@epa.gov* or *banks.julia@epa.gov.*

3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

4. *Hand Delivery or Courier:* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Instructions: Direct your comments to Docket ID No. EPA–R06–RCRA–2012–XXXX. EPA's policy is that all comments received will be included in the public docket without change, including personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov,* or email. The Federal *http://www.regulations.*gov Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*).

You can view and copy the documents that form the basis for this authorization and codification and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following location: EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number: (214) 665–8533 or (214) 665–8178. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone numbers: (214) 665–8533 and (214) 665–8178, and Email address: *patterson.alima@epa.gov* or *banks.julia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Authorization of State-Initiated Changes

A. Why are revisions to State programs necessary?

States which have received Final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal program changes, the States must change their programs and ask the EPA to authorize the changes. Changes to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279. States can also initiate their own

changes to their hazardous waste program and these changes must then be authorized.

B. What decisions have we made in this rule?

We conclude that Arkansas' revisions to its authorized program meet all of the statutory and regulatory requirements established by RCRA. We found that the State-initiated changes make Arkansas' rules more clear or conform more closely to the Federal equivalents and are of such nature that a formal application is unnecessary. Therefore, we grant Arkansas final authorization to operate its hazardous waste program with the changes described in the table at Section G below. Arkansas has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out all authorized aspects of the RCRA program, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Arkansas, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

The effect of this decision is that a facility in Arkansas subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Arkansas has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the statutes and regulations for which Arkansas is being authorized by this direct action are already effective and are not changed by this action.

D. Why wasn't there a proposed rule before this rule?

The EPA did not publish a proposal before this rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization or the incorporation-by-reference of the State program, we will withdraw this rule by publishing a timely document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes, or the incorporation-by-reference, on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. If you want to comment on this authorization and incorporation-by-reference, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program or the incorporation-by-reference of the State program, we may withdraw only that part of this rule, but the authorization of the program changes or the incorporation-by-reference of the State program that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization or incorporation-by-reference of the State program will become effective and which part is being withdrawn.

F. For what has Arkansas previously been authorized?

Arkansas initially received final authorization on January 25, 1985 (50 FR 1513), to implement its Base Hazardous Waste Management program. Arkansas received authorization for revisions to its program on January 11, 1985 (50 FR 1513), effective January 25, 1985; March 27, 1990 (55 FR 11192), effective May 29, 1990; September 18, 1991 (56 FR 47153), effective November 18, 1991; October 5, 1992 (57 FR 45721), effective December 4, 1992; October 7, 1994 (59 FR 51115), effective December 21, 1994, April 24, 2002 (67 FR 20038), effective June 24, 2002; August 15, 2007 (72 FR 45663), effective October 15, 2007, as amended June 28, 2010 (75 FR 36538); June 28, 2010 (75 FR 36538), effective August 27, 2010; and August 10, 2012 (77 FR 47779), effective October 9, 2012.

G. What changes are we authorizing with this action?

The State has made amendments to the provisions listed in the table which follows. These amendments clarify the State's regulations and make the State's regulations more internally consistent. The State's laws and regulations, as amended by these provisions, provide authority which remains equivalent to, no less stringent than, and not broader in scope than the Federal laws and regulations. These State-initiated changes satisfy the requirements of 40 CFR 271.21(a). We are granting Arkansas final authorization to carry out the following provisions of the State's program in lieu of the Federal program. These provisions are analogous to the indicated RCRA regulations found at 40 CFR as of July 1, 2008. Arkansas Pollution Control and Ecology Commission Regulation No. 23, Hazardous Waste Management, as amended April 23, 2010, effective June 13, 2010.

State requirement	Analogous Federal requirement
Reg. No. 23 260.20(d)–(f).	40 CFR 260.20 (d)–(e) related.
Reg. No. 23 261.21 (a)(3) and 261.21(a)(4); Notes 1–4.	40 CFR 261.21(a)(3) and 261.21(a)(4); Notes 1–4.
Reg. No. 23 261.33(e) and (f).	40 CFR 261.33(e) and (f).
Reg. No. 23 262.12 ..	40 CFR 262.12.
Reg. No. 23 263.20(h)(1) [reserved].	40 CFR 263.20(h)(1).
Reg. No. 23 270.7 (e)(2)(ii) introductory paragraph.	40 CFR 124.32(b)(2) introductory paragraph.

H. Who handles permits after the authorization takes effect?

This authorization does not affect the status of State permits and those permits issued by the EPA because no new substantive requirements are a part of these revisions.

I. How does this action affect Indian Country (18 U.S.C. 1151) in Arkansas?

Arkansas is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

II. Incorporation-by-Reference

A. What is codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste management regulatory program. The EPA codifies its authorization of State programs in 40 CFR part 272 and incorporates by reference State statutes and regulations that the EPA will enforce under sections 3007 and 3008 of RCRA and any other applicable statutory provisions.

B. What is the history of the codification of Arkansas' hazardous waste management program?

The EPA incorporated by reference Arkansas' then authorized hazardous waste program effective December 13, 1993 (58 FR 52674), August 21, 1995 (60 FR 32112), and August 27, 2010 (75 FR 36538). In this action, EPA is revising Subpart E of 40 CFR part 272 to include the recent authorization revision actions effective August 27, 2010 (75 FR 36538) and October 9, 2012 (77 FR 47779).

C. What codification decisions have we made in this rule?

The purpose of this **Federal Register** document is to codify Arkansas' base hazardous waste management program and its revisions to that program. The EPA provided notices and opportunity for comments on the Agency's decisions to authorize the Arkansas program, and the EPA is not reopening the decisions, nor requesting comments, on the Arkansas authorizations as published in the **Federal Register** notices specified in Section I.F. of this document.

This document incorporates by reference Arkansas' hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. By codifying Arkansas' authorized program and by amending the Code of Federal Regulations, the public will be more easily able to discern the status of Federally approved requirements of the Arkansas hazardous waste management program.

The EPA is incorporating by reference the Arkansas authorized hazardous waste program in subpart E of 40 CFR part 272. Section 272.201 incorporates by reference Arkansas' authorized hazardous waste statutes and regulations. Section 272.201 also references the statutory provisions (including procedural and enforcement provisions) which provide the legal basis for the State's implementation of the hazardous waste management program, the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are approved as part of the hazardous waste management program under Subtitle C of RCRA.

D. What is the effect of Arkansas' codification on enforcement?

The EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013, and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in authorized States. With respect to these actions, the EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than any authorized State analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Arkansas procedural and enforcement authorities. Section 272.201(c)(2) of 40 CFR lists the statutory and regulatory provisions which provide the legal basis for the State's implementation of the hazardous waste management program, as well as those procedural and enforcement authorities that are part of the State's approved program, but these are not incorporated by reference.

E. What State provisions are not part of the codification?

The public needs to be aware that some provisions of Arkansas' hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are ''broader in scope'' than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Federal rules for which Arkansas is not authorized, but which the State has adopted in its regulations;

(3) Unauthorized amendments to authorized State provisions; and

(4) New unauthorized State requirements.

State provisions that are ''broader in scope'' than the Federal program are not part of the RCRA authorized program and the EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.201(c)(3) lists the Arkansas regulatory provisions which are ''broader in scope'' than the Federal program and which are not part of the authorized program being incorporated by reference. ''Broader in scope'' provisions cannot be enforced by the EPA; the State, however, may enforce such provisions under State law.

Arkansas has adopted but is not authorized for the following Federal rules published in the **Federal Register** on July 15, 1985 (50 FR 28702; amendments to 40 CFR 260.22 only); April 12, 1996 (61 FR 16290); August 5, 2005 (70 FR 45508); October 4, 2005 (70 FR 57769); October 12, 2005 (70 FR 59402); April 4, 2006 (71 FR 16862); July 14, 2006 (71 FR 40254); July 28, 2006 (71 FR 42928); January 2, 2008 (73 FR 57). Therefore, these Federal amendments included in Arkansas' regulations, are not part of the State's authorized program and are not part of the incorporation by reference addressed by this **Federal Register** document.

Additionally, Arkansas' hazardous waste regulations include amendments which have not been authorized by the EPA. Since the EPA cannot enforce a State's requirements which have not been reviewed and authorized in accordance with RCRA section 3006 and 40 CFR part 271, it is important to be precise in delineating the scope of a State's authorized hazardous waste program. Regulatory provisions that have not been authorized by the EPA include amendments to previously authorized State regulations as well as new State requirements. State regulations that are not incorporated by reference in this rule at 40 CFR 272.201(c)(1), or that are not listed in 40 CFR 272.201(c)(3) (''broader in scope''), are considered new unauthorized State requirements. These requirements are not Federally enforceable.

With respect to any requirement pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized, the EPA will continue to enforce the Federal HSWA standards until the State is authorized for these provisions.

F. What will be the effect of Federal HSWA requirements on the codification?

The EPA is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) takes effect in authorized and not authorized States at the same time. A HSWA requirement or prohibition supersedes any less

stringent or inconsistent State provision which may have been previously authorized by the EPA (50 FR 28702, July 15, 1985). The EPA has the authority to implement HSWA requirements in all States, including authorized States, until the States become authorized for such requirement or prohibition. Authorized States are required to revise their programs to adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), the EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirement implemented by the EPA. However, until the EPA authorizes those State requirements, the EPA can only enforce the HSWA requirements and not the State analogs. The EPA will not codify those State requirements until the State receives authorization for those requirements.

Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore, this action is not subject to review by OMB. This rule incorporated by reference Arkansas' authorized hazardous waste management regulations, and imposes no additional requirements beyond those imposed by State law. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Incorporation by reference will not impose any new burdens on small entities. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule merely incorporates by reference certain existing State hazardous waste management program requirements which the EPA already approves under 40 CFR part 271, and does not impose any additional enforceable duty beyond that required by State law, it 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).

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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely incorporates by reference existing State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000).

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply Distribution or Use'' (66 FR 28344, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for incorporation by reference as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State incorporation by reference application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. The final rule does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective December 1, 2014.

List of Subjects

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 18, 2014.

Ron Curry,

Regional Administrator, Region 6.

For the reasons set forth in the preamble, under the authority at 42 U.S.C. 6912(a), 6926, and 6974(b), the EPA is granting final authorization under part 271 to the State of Arkansas for revisions to its hazardous waste program under the Resource Conservation and Recovery Act and is amending 40 CFR part 272 as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

■ 2. Revise § 272.201 to read as follows:

§ 272.201 Arkansas State-administered program: Final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Arkansas final authorization for the following elements as submitted to EPA in Arkansas' Base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on May 29, 1990; November 18, 1991; December 4, 1992; December 21, 1994; June 24, 2002; October 15, 2007; August 27, 2010; October 9, 2012 and December 1, 2014.

(b) The State of Arkansas has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State statutes and regulations.* (1) The Arkansas statutes and regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the Arkansas statutes that are incorporated by reference are available from Michie Publishing, 1275 Broadway Albany, New York 12204, Phone: (800) 223–1940. Copies of the Arkansas regulations that are incorporated by reference are available from the Arkansas Department of Environmental Quality Web site at *http://www.adeq.state.ar.us/regs/default.htm* or the Public Outreach Office, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118–5317, Phone: (501) 682–0923. You may inspect a copy at EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(i) The Binder entitled ''EPA-Approved Arkansas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program'', dated October, 2012.

(ii) [Reserved]

(2) The following provisions provide the legal basis for the State's implementation of the hazardous waste management program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) Arkansas Code of 1987 Annotated (A.C.A.), 2000 Replacement, Title 4, Business and Commercial Law, Chapter 75: Section 4–75–601(4) ''Trade Secret''.

(ii) Arkansas Code of 1987 Annotated (A.C.A.), 2000 Replacement, Title 8, Environmental Law, Chapter 1: Section 8–1–107.

(iii) Arkansas Hazardous Waste Management Act of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2000 Replacement, Title 8, Environmental Law, Chapter 7, Subchapter 2: Sections 8–7–205 through 8–7–214, 8–7–217, 8–7–218, 8–7–220, 8–7–222, 8–7–224 and 8–7–225(b) through 8–7–225(d).

(iv) Arkansas Hazardous Waste Management Act of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2009 Supplement, Title 8, Environmental Law, Chapter 7, Subchapter 2: Sections 8–7–204 (except 8–7–204(e)(3)(B)) and 8–7–227.

(v) Arkansas Resource Reclamation Act of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2000 Replacement, Title 8, Environmental Law, Chapter 7, Subchapter 3: Sections 8–7–302(3), 8–7–303 and 8–7–308.

(vi) Remedial Action Trust Fund Act of 1985, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2000 Replacement, Title 8, Environmental Law, Chapter 7, Subchapter 5: Sections 8–7–505(3), 8–7–507 and 8–7–511.

(vii) Remedial Action Trust Fund Act of 1985, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2009 Supplement, Title 8, Environmental Law, Chapter 7, Subchapter 5: Sections 8–7–503(6) and (7), 8–7–508 and 8–7–512.

(viii) Arkansas Freedom of Information Act (FOIA) of 1967, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2009 Supplement, Title 25, State Government, Chapter 19: Sections 25–19–103(1), 25–19–105, 25–19–107.

(ix) Arkansas Pollution Control and Ecology (APC&E) Commission Regulation No. 23, Hazardous Waste Management, as amended April 23, 2010, effective June 13, 2010, Chapter One; Chapter Two, Sections 1, 2, 3(a), 3(b)(3), 4, 260.2, 260.20(c) through (f), 261 Appendix IX, 270.7(h) and (j), 270.10(e)(8), 270.34, Chapter Three, Sections 19 and 21, 22; Chapter Five, Section 28.

(x) Arkansas Pollution Control and Ecology (APC&E) Commission, Regulation No. 7, Civil Penalties, July 24, 1992.

(xi) Arkansas Pollution Control and Ecology (APC&E) Commission, Regulation No. 8, Administrative Procedures, February 12, 2009.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Arkansas Hazardous Waste Management Act, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2000 Replacement, Title 8, Environmental Law, Chapter 7, Subchapter 2: Section 8–7–226.

(ii) Arkansas Pollution Control and Ecology (APC&E) Commission Regulation No. 23, Hazardous Waste Management, as amended April 23, 2010, effective June 13, 2010, Chapter Two, Sections 6, 262.13(c), 262.24(d), 263.10(e), 263.13, 264.71(e), and 265.71(e).

(4) *Unauthorized State amendments and provisions.* Arkansas has partially or fully adopted, but is not authorized to implement, the Federal rules that are listed in the following table. The EPA will continue to implement the Federal HSWA requirements for which Arkansas is not authorized until the State receives specific authorization for those requirements. The EPA will not enforce the non-HSWA Federal rules although they may be enforceable under State law. For those Federal rules that contain both HSWA and non-HSWA requirements, the EPA will enforce only the HSWA portions of the rules.

Federal requirement	**Federal Register** reference	Publication date
HSWA Codification Rule—Delisting (HSWA) (Checklist 17B—amendments to 40 CFR 260.22 only).	50 FR 28702	July 15, 1985.
Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision (HSWA) (Checklist 152).	61 FR 16290	April 12, 1996.
Universal Waste Rule: Specific Provisions for Mercury Containing Equipment (Non-HSWA) (Checklist 209).	70 FR 45508	August 5, 2005.

Federal requirement	Federal Register reference	Publication date
Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (''Headworks exemptions'') (Non-HSWA) (Checklist 211).	70 FR 57769	October 4, 2005.
NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) (HSWA and Non-HSWA) (Checklist 212).	70 FR 59402	October 12, 2005.
Burden Reduction Initiative (HSWA and Non-HSWA) (Checklist 213)	71 FR 16862	April 4, 2006.
Corrections to Errors in the Code of Federal Regulations (HSWA and Non-HSWA) (Checklist 214).	71 FR 40254	July 14, 2006.
Cathode Ray Tubes Rule (HSWA) (Checklist 215)	71 FR 42928	July 28, 2006.
Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas (Non-HSWA) (Checklist 216).	73 FR 57	January 2, 2008.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of Arkansas, signed by the Executive Director of the Arkansas Commission on Environmental Quality (TCEQ) on June 27, 2012, and by the EPA Regional Administrator on July 10, 2012, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* ''Attorney General's Statement for Final Authorization'', signed by the Attorney General of Arkansas on July 9, 1984 and revisions, supplements, and addenda to that Statement dated September 24, 1987, February 24, 1989, December 11, 1990, May 7, 1992 and by the Independent Legal Counsel on May 10, 1994, February 2, 1996, March 3, 1997, July 31, 1997, December 1, 1997, December 12, 2001, July 27, 2006, and December 12, 2010 are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(7) *Program description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

■ 3. Appendix A to part 272, State Requirements, is amended by revising the listing for ''Arkansas'' to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Arkansas

The statutory provisions include:

Arkansas Hazardous Waste Management Act of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2000 Replacement, Title 8, Environmental Law, Chapter 7, Subchapter 2: Sections 8–7–202, 8–7–203, 8–7–215, 8–7–216, 8–7–219, 8–7–221, 8–7–223 and 8–7–225(a).

Arkansas Code of 1987 Annotated (A.C.A.), 2000 Replacement, Title 8, Environmental Law, Chapter 10, Subchapter 3: Section 8–10–301(d).

Copies of the Arkansas statutes that are incorporated by reference are available from Michie Publishing, 1275 Broadway Albany, New York 12204, Phone: (800) 223–1940.

The regulatory provisions include:

Arkansas Pollution Control and Ecology (APC&E) Commission Regulation No. 23, Hazardous Waste Management, as amended April 23, 2010, effective June 13, 2010. Please note that the 2010 APC&E Commission Regulation No. 23, is the most recent version of the Arkansas authorized hazardous waste regulations. For a few provisions, the authorized version is found in the APC&E Commission Regulation 23, effective January 21, 1996, December 6, 2003 or March 23, 2006. Arkansas made subsequent changes to these provisions but these changes have not been authorized by EPA. The provisions from the January 21, 1996, December 6, 2003 or March 23, 2006 regulations are noted below.

Chapter Two, Sections 3(b) introductory paragraph; 3(b)(2); 3(b)(4); Section 260—Hazardous Waste Management System—General—260.1; 260.3; 260.10 (except the definitions of ''cathode ray tube'', ''consolidation'' ''CRT collector'', ''CRT glass manufacturer'', ''CRT processing'', ''gasification'', ''mercury-containing device'', ''Performance Track member facility'', the phrase ''a written permit issued by the Arkansas Highway and Transportation Department authorizing a person to transport hazardous waste (Hazardous Waste Transportation Permit), or'' in the definition for ''permit'' and 260.10 (3) ''universal waste''); 260.10 (3) ''universal waste'' (December 6, 2003); 260.11(a) (March 23, 2006); 260.11(b) through (g) (except reserved provisions); 260.20 (except 260.20(c) through (f)); 260.21; 260.23; 260.30; 260.31(a); 260.31(b) introductory paragraph; 260.31 (b)(1) through (8) (March 23, 2006); 260.31(c); 260.32; 260.33; 260.40; 260.41; and Appendix I.

Section 261—Identification and Listing of Hazardous Waste—261.1; 261.2; 261.3 (except 261.3(a)(2)(iv) and reserved provisions); 261.3(a)(2)(iv) (March 23, 2006); 261.4(a) (except 261.4(a)(9)(iii), (a)(12)(i), (a)(22)); 261.4(a)(9)(iii) and (a)(12)(i) (March 23, 2006); 261.4(b) through (e); 261.4(f) (except 261.4(f)(9)); 261.4(f)(9) (March 23, 2006); 261.4(g); 261.5; 261.6 (except (a)(5)); 261.7; 261.8; 261.9 (except 261.9(c)); 261.9(c) (December 6, 2003); 261.10; 261.11; 261.20 through 261.24; 261.30 through 261.33; 261.35; 261.38; Appendices I, VII and VIII.

Section 262 Standards Applicable to Generators of Hazardous Waste—262.10 (except 262.10(d)); 262.11; 262.12; 262.13 (except 262.13(c)); 262.20 (except reserved provision); 262.21; 262.22; 262.23; 262.24 (except 262.24(d)); 262.27; 262.30; 262.31 through 262.34; 262.35 (except the phrase ''and the requirements of § 262.13(d) and § 263.10(d)'' at 262.35(a)(2)); 262.40; 262.41 (except references to PCBs) (January 21, 1996); 262.42; 262.43; 262.50 through 262.58; 262.60 (except 262.60(e)); 262.70; 262.200 through 262.216; and Appendix I.

Section 263—Standards Applicable to Transporters of Hazardous Waste 263.10 (except 263.10(d) and (e)), 263.11, 263.12, 263.20 (except 263.20(g)(4) and reserved provision), 263.21, 263.22, 263.30 and 263.31.

Section 264—Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities—264.1 (except 264.1(g)(11)(iii) and reserved provisions); 264.1(g)(11)(iii) (December 6, 2003); 264.3; 264.4; 264.10; 264.11; 264.12 (except 264.12(a)(2)); 264.13 through 264.19; 264.20(a) through (c); 264.30 through 264.35; 264.37; 264.50 through 264.56; 264.70; 264.71 (except 264.71(a)(3), (d) and (e)); 264.72; 264.73 (March 23, 2006); 264.74; 264.75 (except 264.75(g)); 264.75(g) (January 21, 1996); 264.75(h) (January 21, 1996); 264.76 (except reserved provision); 264.77; 264.90 through 264.101; 264.110 through 264.120; 264.140; 264.141 (except the definition of ''captive insurance'' at 264.141(f)); 264.142; 264.143 (except the last sentence of 264.143(e)(1)); 264.144; 264.145 (except the last sentence of 264.145(e)(1)); 264.146; 264.147 (except the last sentences of 264.147(a)(1)(i) and 264.147(b)(1)(ii) and reserved provision); 264.148; 264.151; 264.170 through 264.174; 264.175 (except reserved provision); 264.176 through 264.179; 264.190 through 264.200; 264.220 through 264.223; 264.226 through 264.232; 264.250 through 264.254; 264.256 through 264.259; 264.270 through 264.273; 264.276; 264.278 through 264.283; 264.300 through 264.304; 264.309; 264.310; 264.312(a); 264.313; 264.314(a) (except 264.314(a)(2) and (a)(3)); 264.314(b) (except the last sentence); 264.314(c) through 264.314(f); 264.315; 264.316; 264.317; 264.340 through 264.345; 264.347 (March 23, 2006); 264.351; 264.550 through 264.555 (except reserved provision); 264.570 through 264.575; 264.600 through 264.603; 264.1030 through 264.1036; 264.1050 through 264.1065 (except reserved provision); 264.1080 through 264.1090; 264.1100 through 264.1102; 264.1200; 264.1201; 264.1202; Appendix I; and Appendices IV, V and IX.

Section 265—Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities—265.1 (except 265.1(c)(14)(iii) and reserved provisions); 265.1(c)(14)(iii) (December 6, 2003); 265.4, 265.10, 265.11, 265.12 (except 265.12(a)(2)), 265.13, 265.14, 265.15 (except the phrase ‘‘, except for Performance Track member facilities . . . as described in paragraph (b)(5) of this section’’ at 265.15(b)(4) and 265.15(b)(5)); 265.16 (except 265.16(a)(4)); 265.17 through 265.19; 265.30 through 265.35; 265.37; 265.50; 265.51; 265.52 (except the last three sentences of 265.52(b)); 265.53 through 265.55; 265.56 (except 265.56(j)); 265.56(i) and (j) (March 23, 2006); 265.70, 265.71 (except 265.71(a)(3), (d) and (e)), 265.72; 265.73 (March 23, 2006); 265.74; 265.75 (except 265.75(g)); 265.75(g) (January 21, 1996); 265.75(h) (January 21, 1996); 265.76(a); 265.77; 265.90 (except the last sentence of 265.90(d)(1), and in 265.90(d)(3) the phrase ‘‘and place it in the facility’s . . . closure of the facility’’); 265.91; 265.92; 265.93 (except the last sentence of 265.93(d)(2) and the last sentence of 265.93(d)(5)); 265.94; 265.110 through 265.112; 265.113 (except 265.113(e)(5)); 265.113(e)(5) (March 23, 2006); 265.114; 265.115 (March 23, 2006); 265.116 through 265.119; 265.120 (March 23, 2006); 265.121; 265.140, 265.141 (except the definition of ‘‘captive insurance’’ at 265.141(f)); 265.142; 265.143 (except the last sentence of 265.143(d)(1) and ‘‘qualified’’ before ‘‘Arkansas-registered Professional Engineer’’ in 265.143(h)); 265.144; 265.145; 265.146; 265.147 (except the last sentences of 265.147(a)(1) and 265.147(b)(1), ‘‘qualified’’ before ‘‘Arkansas-registered Professional Engineer’’ in 265.147(e) and reserved provision); 265.148; 265.170 through 265.173; 265.174 (March 23, 2006); 265.176; 265.177, 265.178, 265.190; 265.191; 265.192; 265.193(a) (March 23, 2006); 265.193(b) through 265.193(i); 265.194; 265.195 (March 23, 2006); 265.196 (except 265.196(f)); 265.196(f) (March 23, 2006); 265.197 through 265.200; 265.201 (March 23, 2006); 265.202; 265.220; 265.221 (except 265.221(a)); 265.221(a) (March 23, 2006); 265.222; 265.223; 265.224 (March 23, 2006); 265.224(b) and (c); 265.225; 265.226; 265.228 through 265.231; 265.250 through 265.258; 265.259(a) (March 23, 2006); 265.259(b) and (c); 265.260; 265.270; 265.272; 265.273; 265.276; 265.278; 265.279; 265.280 (except the word ‘‘qualified’’ before ‘‘Arkansas-registered professional engineer’’ in 265.180(e)); 265.281; 265.282; 265.300; 265.301(a); 265.301(b) through 265.301(i); 265.302; 265.303(a) (March 23, 2006); 265.303(b) and (c); 265.304; 265.309; 265.310; 265.312(a); 265.313; 265.314 (except 265.314(a)(2), (a)(3) and the last sentence in 265.314(b)) (March 23, 2006); 265.315; 265.316; 265.340; 265.341; 265.345; 265.347; 265.351; 265.352; 265.370; 265.373; 265.375; 265.377; 265.381; 265.382; 265.383; 265.400 through 265.406; 265.430; 265.440 through 265.445; 265.1030 through 265.1035; 265.1050 (except reserved provision); 265.1051 through 265.1060; 265.1061 (March 23, 2006); 265.1062 (March 23, 2006); 265.1063; 265.1064; 265.1080 through 265.1090; 265.1100 (March 23, 2006); 265.1101 (except the phrase ‘‘, except for Performance Track . . . director’’ and the last sentence in 265.1102(c)(4); 265.1102; 265.1200; 265.1201; 265.1202; Appendix I; and Appendices III through VI.

Section 266—Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities—266.20 through 266.23; 266.70 (except 266.70(b)(3)); 266.80; 266.100 (except 266.100(b)); 266.100(b) (March 23, 2006); 266.101; 266.102 (except 266.102(e)(10)); 266.102(e)(10) (March 23, 2006); 266.103 (except 266.103(d) and (k)); 266.103(d) and (k) (March 23, 2006); 266.104 through 266.112; 266.200 through 266.206; 266.210; 266.220; 266.225; 266.230; 266.235; 266.240; 266.245; 266.250; 266.255; 266.260; 266.305; 266.310; 266.315; 266.320; 266.325; 266.330; 266.335; 266.340; 266.345; 266.350; 266.355; 266.360; and Appendices I through XIII.

Section 267—Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit—267.1 through 267.3; 267.10 through 267.18; 267.30 through 267.36; 267.50 through 267.58; 267.70 through 267.76; 267.90; 267.101; 267.110 through 267.113; 267.115 through 267.117; 267.140 through 267.143; 267.147 through 267.151; 267.170 through 267.177; 267.190 through 267.204; and 267.1100 through 267.1108.

Section 268—Land Disposal Restrictions—268.1 (except 268.1(f)(3)); 268.1(f)(3) (December 6, 2003); 268.2 through 268.4, 268.7(a) (except 268.7(a)(1), (a)(2) introductory paragraph and reserved provisions); 268.7(a)(1) and (a)(2) (introductory paragraph) (March 23, 2006); 268.7(b) (except 268.7(b)(6)); 268.7(b)(6) (March 23, 2006); 268.7(c) through (e); 268.9(a) (except second sentence); 268.9(b) and (c); 268.9(d) introductory paragraph (March 23, 2006); 268.9(d) (1) and (2) (except reserved provision); 268.13; 268.14; 268.20, 268.30 through 268.39; 268.40 (except 268.40(e)(1)–(4) and 268.40(i)); 268.41; 268.42 (except 268.42(b)); 268.43; 268.45; 268.46; 268.48; 268.49; 268.50; Appendices III, IV, VI through IX and XI.

Section 270—Administered Permit Programs: The Hazardous Waste Permit Program—270.1 (except 270.1(c)(2)(viii)(C)); 270.1(c)(2)(viii)(C) (December 6, 2003); 270.2; 270.3 (except reserved provision); 270.4; 270.5; 270.6(a) (except the reference to SW–846) (March 23, 2006); 270.6(b) (March 23, 2006); 270.7 (except 270.7(h) and (j)); 270.10 (except 270.10(e)(8) and (k)); 270.11 through 270.18; 270.19 (except 270.19(e)); 270.19(e) (March 23, 2006); 270.20; 270.21; 270.22 introductory paragraph (March 23, 2006); 270.22(a) through (f); 270.23; 270.24 (except 270.24(d)(3)); 270.24(d)(3) (March 23, 2006); 270.25 (except 270.25(e)(3)); 270.25(e)(3) (March 23, 2006); 270.26 through 270.31; 270.32 (except 270.32(b)(3)); 270.33; 270.40; 270.41; 270.42 (except 270.42(j) through (l)); 270.42(j) (March 23, 2006); 270.42 Appendix I (except entry at item L.10 and item O); 270.43; 270.50; 270.51; 270.60 (except reserved provision); 270.61; 270.62 (except 270.62 introductory paragraph); 270.62 introductory paragraph (March 23, 2006); 262.63; 270.64; 270.65; 270.66 (except 270.66 introductory paragraph); 270.66 introductory paragraph (March 23, 2006); 270.67; 270.68; 270.70 through 270.73; 270.79; 270.80; 270.85; 270.90; 270.95; 270.100; 270.105; 270.110; 270.115; 270.120; 270.125; 270.130; 270.135; 270.140; 270.145; 270.150; 270.155; 270.160; 270.165; 270.170; 270.175; 270.180; 270.185; 270.190; 270.195; 270.200; 270.205; 270.210; 270.215; 270.220; 270.225; 270.230; 270.235 (March 23, 2006); 270.250; 270.255; 270.260; 270.265; 270.270; 270.275; 270.280; 270.290; 270.300; 279.305; 270.310; 270.315; and 270.320.

Section 273—Standards for Universal Waste Management—273.1 (except 273.1(a)(3)); 273.1(a)(3) (December 6, 2003); 273.2; 273.3; through 273.4 (December 6, 2003); 273.5 (except 273.5(b)(3)); 273.6; 273.8; 273.9 (except selected definitions); 273.9 ‘‘large quantity handler of universal waste’’, ‘‘small quantity handler of universal waste’’, and ‘‘universal waste’’ (c) (December 6, 2003); 273.10; 273.11; 273.12; 273.13 (except 273.13(c)); 273.13(c) (December 6, 2003); 273.14 (except 273.14 (d)); 273.14 (d) (December 6, 2003); 273.15 through 273.20; 273.30; 273.31; 237.32 (except 273.32(b)(4) and (5)); 273.32(b)(4) and (5) (December 6, 2003); 273.33 (except 273.33(c)); 273.33(c) (December 6, 2003); 273.34 (except 273.34(d)); 273.34(d) (December 6, 2003); 273.35 through 273.40; 273.50 through 273.56; 273.60; 273.61; 273.62; 273.70; 273.80; and 273.81.

Section 279—Standards for the Management of Used Oil—279.1; 279.10; 279.11; 279.12; 279.20 through 279.24; 279.30; 279.31; 279.32; 279.40 through 279.47; 279.50 through 279.67; 279.70 through 279.75; 279.80; 279.81; and 279.82(a).

Copies of the Arkansas regulations that are incorporated by reference are available from the Arkansas Department of Environmental Quality Web site at *http://www.adeq.state.ar.us/regs/default.htm* or the Public Outreach Office, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118–5317, Phone: (501) 682–0923.

* * * * *

[FR Doc. 2014–23364 Filed 10–1–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 01–92; FCC 14–134]

Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order on Remand responds to the court’s directive, and

specifically examines the interplay between the T-Mobile Order and the rural exemption rule. The Ninth Circuit found that the Commission's T-Mobile Order did not adequately analyze the order's affects upon the rural exemption rule in of the Communications Act of 1934, remanding the order to the Commission for ''for further consideration.''

DATES: This Order is effective November 3, 2014.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Remand CC Docket No. 01–92, FCC 14–134, adopted September 15, 2014 and released September 17, 2014. This document does not contain information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002. As we are adopting no rules in this Order on Remand, no regulatory flexibility analysis is required. The full-text of this document may be downloaded at the following Internet address: *http://www.fcc.gov/document/commission-finds-2005-t-mobile-order-not-odds-rural-exemption.* The complete text may be purchased from Best Copy and Printing, Inc., 445 12th Street SW., Room Cy-B402, Washington, DC 20554. To request alternative formats for persons with disabilities (e.g., accessible format documents, sign language, interpreters, CARTS, etc.), send an email to *fcc504@fcc.gov* or call the Commissions Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

I. Introduction

1. In response to claims by Commercial Mobile Radio Service (CMRS) providers that incumbent local exchange carriers (LECs) were filing state tariffs charging excessive rates for terminating wireless-originated local traffic on their wireline networks, the Commission in its 2005 *T-Mobile Order* adopted a rule banning such wireless termination tariffs on a prospective basis. Two incumbent LECs sought judicial review, arguing that the rule conflicted with the ''rural exemption'' in section 251(f)(1) of the Communications Act of 1934 (the Act), which exempts rural incumbent LECs from certain market-opening requirements imposed on incumbent LECs by section 251(c) unless a state commission terminates that exemption according to specified criteria. Finding that the *T-Mobile Order* did not adequately analyze and explain the effects of its rule on the rural exemption in section 251(f)(1), the United States Court of Appeals for the Ninth Circuit last year ''remand[ed]'' the *T-Mobile Order* to the FCC ''for further consideration.''

2. This Order on Remand responds to the court's directive. Specifically, the Commission examines the interplay between the *T-Mobile Order* and the rural exemption set forth in section 251(f)(1)(A). As explained below, the *T-Mobile Order* was based on the Commission's plenary authority under sections 201 and 332 of the Act, and the rural exemption contained in section 251(f)(1)(A) only relieves rural LECs from complying with obligations arising under an entirely separate statutory provision, i.e., section 251(c) of the Act. Accordingly, we conclude that the *T-Mobile Order* rule prohibiting the filing of wireless termination tariffs for non-access traffic is not at odds with the section 251(f)(1) rural exemption.

II. Background

A. Interconnection and Compensation Arrangements

3. *LEC/CMRS Interconnection Regime.* The Commission established rules governing interconnection between LECs and CMRS providers in 1994. Pursuant to its authority under sections 201(a) and 332 of the Act, the Commission adopted rules requiring LECs and CMRS carriers to negotiate in good faith the terms and conditions of interconnection, and pay mutual compensation for the exchange of traffic. As originally adopted, § 20.11 of the Commission's rules required LECs to provide the type of interconnection reasonably requested and also required the originating carrier, whether LEC or CMRS provider, to pay reasonable compensation to the terminating carrier in connection with traffic that terminates on the latter's network facilities. As a general matter, early decisions addressing CMRS interconnection issues indicate that the Commission intended for these arrangements to be negotiated agreements between the parties and also reflect an expectation that tariffs would be filed only after carriers had negotiated agreements.

4. *Section 251 Duties.* Adopted as part of the Telecommunications Act of 1996 (1996 Act), section 251 of the Act provides a graduated set of interconnection requirements and other obligations designed to foster competition in telecommunications markets. The nature and scope of these obligations vary depending on the type of service provider. Section 251(a) sets forth general duties applicable to all telecommunications carriers, including the duty ''to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.'' Section 251(b) sets forth additional duties for LECs pertaining to resale of services, number portability, dialing parity, access to rights-of-way, and reciprocal compensation—the duty of LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications (i.e., arrangements for exchange of traffic terminating on another carrier's network). Section 251(c) sets forth the most detailed obligations, which apply only to incumbent LECs. These section 251(c) obligations include, among other things, the duty to ''negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements'' to fulfill the section 251(b) and (c) requirements.

5. *The Rural Exemption.* Section 251(f)(1)(A), generally known as ''the rural exemption,'' specifies that section 251(c) ''shall not apply to a rural telephone company'' until the rural telephone company, or rural LEC, has received a bona fide ''request for interconnection, services, or network elements,'' and the relevant state commission determines ''that the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 . . . . '' The Commission has stated that Congress intended exemption from the section 251(c) requirements to be the exception rather than the rule, and to apply only to the extent, and for the period of time, that policy considerations justify such exemption.

6. *Section 252.* Section 252 of the Act provides that incumbent LECs, upon receiving a request for interconnection under section 251, may seek to negotiate a voluntary interconnection agreement with the requesting carrier. Any party negotiating such an agreement may ask a state commission to mediate any differences. Additionally, section 252(b) sets forth a mandatory arbitration scheme for the resolution of disputes. Further, the final agreement, whether arrived at by negotiation or arbitration, must be submitted for approval to the

state commission. The Commission has declined to adopt rules advising the state commissions on how to conduct mediations and arbitrations, and has asserted that the states are in a better position to develop mediation and arbitration rules that support the objectives of the 1996 Act.

B. The T-Mobile Order

7. The *T-Mobile Order* dealt with certain issues that had arisen in the context of LEC–CMRS interconnection and traffic exchange. CMRS providers typically interconnect indirectly with incumbent LECs via tandems owned by third parties. In this scenario, a CMRS provider delivers the call to a tandem, which in turn delivers the call to the terminating incumbent LEC. The indirect nature of the interconnection enables the CMRS provider and incumbent LEC to exchange traffic even if there is no interconnection agreement or other compensation arrangement between the parties. This structure led to disputes about whether terminating compensation was due in the absence of a compensation arrangement, as well as the type of intercarrier compensation due. In response, incumbent LECs began filing state tariffs that included wireless termination charges, which some CMRS providers claimed were excessive. In 2002, T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners jointly filed a petition for declaratory ruling asking the Commission to reaffirm ''that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements for the transport and termination of traffic.''

8. In the *T-Mobile Order,* the Commission determined that nothing in the 1996 Act or pre-1996 Act requirements specifically prohibited incumbent LECs from filing such state wireless termination tariffs. Given the clear preference for negotiated interconnection agreements reflected in both the 1996 Act and the Commission's past actions and policies under sections 201(a) and 332, however, the Commission found it in the public interest to preclude the filing of wireless termination tariffs in this context going forward. Accordingly, the Commission amended § 20.11 of its rules to prohibit LECs from imposing non-access compensation obligations on CMRS providers pursuant to tariff. The Commission revised this section of the rules pursuant to its ''plenary authority under sections 201 and 332 of the Act.''

9. Recognizing that CMRS providers may lack incentives to enter into agreements for compensation arrangements, the Commission also amended § 20.11 to provide that an incumbent LEC may request interconnection from a CMRS provider and invoke the same negotiation and arbitration procedures that apply under section 252 of the Act to interconnection requests made by a CMRS provider to an incumbent LEC. This revision also was adopted pursuant to the Commission's authority under sections 201 and 332 of the Act. The Commission did not exempt rural incumbent LECs from the rules adopted in the *T-Mobile Order* nor did it expressly address how the new tariff prohibition and procedures related to rural incumbent LECs' exemption from section 251(c) under section 251(f)(1) of the Act. Shortly after the *T-Mobile Order* was released, Ronan Telephone Co. and Hot Springs Telephone Co. (Petitioners) filed a petition for review in the Ninth Circuit. The Ninth Circuit ordered the case held in abeyance until the Commission addressed pending reconsideration requests.

10. In the *2011 USF/ICC Transformation Order,* the Commission declined to reconsider, in the context of broader intercarrier compensation reform, certain aspects of the *T-Mobile Order.* Among the issues considered was whether the Commission had improperly extended the obligations contained in section 252 to providers that are not subject to that provision. The Commission clarified that it did not extend negotiation and arbitration requirements to non-incumbent LECs under section 252, but rather, acting pursuant to sections 201 and 332 and authority ancillary to those provisions and sections 251(a)(1) and 251(b)(5), applied duties ''analogous to the [section 252] negotiation and arbitration requirements.'' Thus, the Commission agreed with parties arguing that references to the negotiation and arbitration procedures in section 252 were intended merely to describe, in an abbreviated manner, duties similar to those applied under section 252.

11. As part of its broader reforms, the Commission also adopted bill-and-keep as the immediately applicable default compensation methodology for non-access traffic between LECs and CMRS providers under § 20.11 and the reciprocal compensation requirements in part 51 of our rules. The Commission reasoned that a federal bill-and-keep methodology for such compensation would address growing confusion and litigation over the appropriate compensation rates for this traffic and eliminate the incentives for traffic stimulation and regulatory arbitrage. Significantly, the Commission did not abrogate existing agreements or otherwise adopt a ''fresh look'' in light of its reforms. Thus, carriers bound by an existing compensation agreement would continue to receive compensation pursuant to such agreements until the conclusion of the contract term. On reconsideration, however, the Commission acknowledged that these agreements often contain change of law provisions that would, as a practical matter, result in carriers moving to a bill-and-keep methodology upon the effective date of the rule rather than when the agreement expires. Accordingly, the Commission extended the effective date of the new default-bill-and-keep methodology from December 29, 2011 to July 1, 2012 for situations where carriers were exchanging non-access traffic pursuant to an agreement.

12. Subsequent to the *USF/ICC Transformation Order,* the Ninth Circuit returned the appeal to the active calendar. In their opening brief to the court, Petitioners maintained that, under section 251(f)(1), rural telephone companies are exempt from the negotiation and arbitration obligations set forth in section 251(c) unless the exemption is terminated by a state public utility commission. They argued that, under the *T-Mobile Order,* LECs are eligible for compensation for terminating CMRS provider traffic only if they enter into negotiated agreements with CMRS providers or submit to the arbitration process. Thus, they contended that the Commission unlawfully usurped the authority of state commissions by essentially terminating the rural exemption.

13. On August 21, 2013, the Ninth Circuit granted the petition for review and remanded the *T-Mobile Order.* Specifically, the court observed that Congress had exempted rural telephone companies from certain section 251 obligations generally applicable to incumbent LECs but that, in the *T-Mobile Order,* the Commission had not included any exemption for rural carriers from the rule prohibiting wireless termination tariffs. Responding to arguments from the petitioners that the rule, effectively eliminated the rural exemption, the court remanded to the Commission to consider and explain this aspect of the issue. We now address that issue.

14. We confirm that the Commission's *T-Mobile Order* did not terminate or otherwise affect operation of the rural exemption or rural carriers' rights under that provision. Nor did it affect the states' role in ruling on petitions to terminate the rural exemption in specific circumstances. Although the

rural exemption adopted in 1996 excused rural LECs from specific new obligations under section 251, it did not excuse them from obligations established pursuant to other sections of the Act. As discussed above, LECs have long been required to negotiate interconnection agreements in good faith governing both the physical linking of networks and any associated charges. These obligations were adopted pursuant to sections 201 and 332 of the Act, and predate the obligations contained in section 251 adopted as part of the 1996 Act. Like the pre-1996 Act orders adopting the LEC–CMRS interconnection regime, the Commission's actions with respect to that regime in the *T-Mobile Order* were based on the Commission's plenary authority under sections 201 and 332 of the Act.

15. The adoption of the 1996 Act in general, and section 251 in particular, did not alter the relevant Commission authority under sections 201 and 332 of the Act with respect to the LEC–CMRS interconnection regime. Section 601(c) of the 1996 Act states that ''[t]his Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.'' The 1996 Act was adopted against the backdrop of Commission regulation of LEC–CMRS interconnection, and nothing in section 251 expressly modified, impaired, or superseded the Commission's efforts. To the contrary, as to section 201, section 251(i) provides: ''Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201.'' Courts likewise have upheld the Commission's continued exercise of sections 201 and 332 authority notwithstanding the adoption of section 251 in the 1996 Act. Thus, sections 201 and 332 provide the basis for the LEC–CMRS interconnection and compensation rules adopted prior to the 1996 Act and an independent and sufficient basis for the modifications of those rules adopted in the *T-Mobile Order.*

16. Moreover, the Section 251 rural exemption is limited to exempting rural incumbent LECs from obligations arising under a different statutory provision, *i.e.,* section 251(c) of the Act. Because the amendments to the LEC–CMRS interconnection regime adopted in the *T-Mobile Order* were supported by the Commission's authority under 201 and 332, the Commission's *T-Mobile Order* did not terminate or otherwise affect operation or applicability of the rural exemption as to rural LECs. We also emphasize that the *T-Mobile Order* did not preempt the authority of a state commission under section 251(f)(1) to evaluate and, if appropriate, terminate a carrier's rural exemption.

17. Some parties have contended that, by precluding, as a practical matter, a LEC from receiving compensation from a CMRS provider for providing call termination services unless it enters into an agreement with the CMRS provider, the Commission ''eviscerates the rural LEC's exemption from negotiating.'' This characterization of the rural exemption is incorrect in that it fails to acknowledge the limited scope of the rural exemption, given the specific reference in section 251(f)(1) to section 251(c).

18. Thus, even to the extent that the *T-Mobile Order* relied, as an alternate basis for authority, on section 251(b), it is not at odds with the section 251(f)(1) rural exemption. In particular, we disagree with Petitioners' claim that the rural exemption extends to obligations in section 251(b) by virtue of a reference to such section in section 251(c). In the *CRC/Time Warner Declaratory Ruling,* the Commission clarified that rural incumbent LEC obligations under sections 251(a) and (b) can be implemented through the state commission arbitration and mediation provisions in section 252 of the Act independently of the 251(c)(1) negotiation obligation.

19. Finally, the LEC obligations under the LEC–CMRS regime are different from the obligations under the 251 regime. Specifically, the relevant ''duty'' in section 251(c)(1) is a legal obligation enforceable against the incumbent LEC to negotiate in good faith. To the extent that the *T-Mobile Order* framework gives a rural incumbent LEC some incentive to negotiate with CMRS providers, that incentive falls well short of a legal duty of the sort at issue in section 251(c)(1). This is particularly true where the rural LEC has other possible options to seek revenues (e.g., from its end users if it can modify its local retail rates), and thus seeking compensation from the CMRS provider is but one alternative.

III. Conclusion

20. For the reasons discussed above, we reject claims that the *T-Mobile Order* ''eviscerates the rural LEC's exemption from negotiating.'' For those same reasons, we likewise reject arguments that the Commission's actions in the *T-Mobile Order* usurped the authority of state utility commissions to terminate the rural exemption. Thus, in response to the *Ronan Remand,* we conclude that the *T-Mobile Order* rule prohibiting the filing of wireless termination tariffs for non-access traffic is not at odds with the section 251(f)(1) rural exemption.

IV. Procedural Matters

A. Final Regulatory Flexibility Act Certification

21. As we are adopting no rules in this Order on Remand, no regulatory flexibility analysis is required.

B. Paperwork Reduction Act Analysis

22. This Order does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002.

C. Congressional Review Act

23. The Commission will not send a copy of this Order on Remand in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act because no rules are being adopted.

V. Ordering Clauses

24. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1–5, 7, 10, 201–05, 207–09, 214, 218–20, 225–27, 251–54, 256, 271, 303, 332, 403, 405, 502 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–55, 157, 160, 201–05, 207–09, 214, 218–20, 225–27, 251–54, 256, 271, 303, 332, 403, 405, 502, 503, and § 1.1, 1.2 of the Commission's rules, 47 CFR 1.1, 1.2, this Order on Remand in CC Docket No. 01–92 *is adopted.*

25. *It is further ordered* that this Order on Remand *shall become effective* November 3, 2014.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–23515 Filed 10–1–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 14–54; RM–11698; DA 14–1361]

Radio Broadcasting Services; Toquerville, Utah

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of JER Licenses, LLC, substitute alternative Channel 281C for vacant Channel 280C at Toquerville, Utah to accommodate the ''hybrid'' application that requests the downgrade of the new FM station from Channel 281C3 to Channel 280A at Peach Springs, Arizona. A staff engineering analysis confirms that Channel 281C can be allotted to Toquerville, Utah consistent with the minimum distance separation requirements of the Rules without a site restriction. The reference coordinates for Channel 281C at Toquerville are 37–15–12 NL and 113–17–00 WL. *See* Supplementary Info. *supra.*

DATES: Effective November 3, 2014.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order,* DA 14–1361, adopted September 18, 2014, and released September 19, 2014. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email *www.BCPIWEB.com.*

Our staff engineering analysis confirms that there is no line of sight and substantial terrain obstructions for Channel 246C at Toquerville, Utah at the proposed reference coordinates; and the restricted site substantially reduces the number of existing communications facilities for a Class C facility. We determine that alternative Channel 281C at Toquerville accommodates the Application for Channel 280A at Peach Springs, Arizona, and grant the Application, File No. BNPH–20120529ALI. This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 280C at Toquerville, and by adding Channel 281C at Toquerville.

[FR Doc. 2014–23522 Filed 10–1–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST–2014–0142]

RIN 2105–AE36

Maintenance of and Access to Records Pertaining to Individuals

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Interim rule with request for comments.

SUMMARY: This rule conforms DOT's regulations on Maintenance of and Access to Records Pertaining to Individuals to the applicable System of Records Notices (SORNs) and current DOT practice. This rule adds the General Investigation Records System to the list of DOT Privacy Act Systems of Records that are exempt from one or more provisions of the Privacy Act. DOT also exempts the Personnel Security Record System from additional provisions of the Privacy Act, as well as correcting the identification number for that System. These exemptions were initially established in 1975; however, a 1980 rulemaking accidentally omitted these exemptions. These changes are effective immediately, though DOT invites public comment.

DATES: This rule is effective on October 2, 2014. *Comment Closing Date:* Comments on the revised Appendix are due on November 3, 2014.

ADDRESSES: You may file comments identified by the docket number DOT–OST–2014–0142 by any of the following methods:

○ *Federal Rulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

○ *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

○ *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.

○ *Fax:* 202–493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2014–0142 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Claire Barrett, Departmental Chief Privacy Officer, Office of the Chief Information Officer, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590 or *claire.barrett@dot.gov* or (202) 366–8135.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, 5 U.S.C. 552a, requires that agencies tell the public when they maintain information about a person in a file which may be retrieved by reference to that person's name or some other identifying particular. A group of these files is a ''system of records,'' and the existence of each system must be published in a ''system of records notice'' (SORN). An agency wishing to exempt portions of some systems of records from certain provisions of the Privacy Act must

notify the public of that exemption in both the SORN and in an exemption rule. This rule clarifies that portions of the General Investigations Records System and Personnel Security Records System are not subject to some access and notification provisions of the Privacy Act. Exempting the systems from these requirements is necessary to protect the public's interest in fair and accurate investigations.

The DOT identifies a system of records that is exempt from one or more provisions of the Privacy Act (pursuant to 5 U.S.C. 552a(j) or (k)) both in the SORN published in the **Federal Register** for public comment and in an Appendix to DOT's regulations implementing the Privacy Act (49 CFR part 10, Appendix). This rule amends the Appendix by exempting those portions of the General Investigations Records System (DOT/OST 016) compiled in the context of an investigation from all portions of the Privacy Act, except the following subsections: (b) (Conditions of disclosure); (c)(1) and (2) (Accounting of certain disclosures); (e)(4)(A) through (F) (Publication of existence and character of system); (e)(6) (Ensure records are accurate, relevant, timely, and complete before disclosure to person other than an agency and other than pursuant to a Freedom of Information Act request); (e)(6) (Ensure records are accurate, relevant, timely, and complete before disclosure to person other than an agency and other than pursuant to a Freedom of Information Act request); (e)(7) (Restrict record keeping on First Amendment Rights); (e)(9) (Rules of conduct); (e)(10) (Safeguards); (e)(11) (Routine use publication); and (i) (Criminal penalties).

This rule also exempts records in the General Investigations Records System from subsections (c)(3) (Accounting of Certain Disclosures) and (d) (Access to Records) to the extent that records consist of investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act, or are properly classified in accordance with 5 U.S.C. 552a(b)(1). Properly classified material in the System is additionally exempt under this rule from subsections (e)(4)(G) through (I) (Agency Requirements) and (f) (Agency Rules) of the Privacy Act.

Additionally, this rule exempts those portions of records in the Personnel Security Records System (DOT/OST 035) that would reveal the identity of a source who furnished information to the Government under an express or, prior to September 27, 1975, an implied promise of confidentiality, from the following subsections of the Privacy Act: (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G) through (I) (Agency Requirements), and (f) (Agency Rules). We also correct an error by replacing an incorrect reference to the identification number of this System, DOT/OST 016, with the correct identification number of DOT/OST 035.

These exemptions were initially adopted as part of the establishment of 49 CFR part 10, published at 40 FR 45729, effective September 29, 1975, and amended by 40 FR 57361 on November 26, 1975. Since that time, DOT has claimed these exemptions in its published SORNs for both of these Systems. On January 30, 1980, DOT republished the Appendix at 45 FR 8993, and summarized the changes as making minor amendments reflecting organizational changes within DOT, adding three limited exemptions for investigatory files, and changing procedures relating to disclosure of medical records. Notwithstanding this explanation, the republished Appendix omitted the exemptions. Despite the absence of the exemptions in the Appendix, DOT has nevertheless continued to refer to them. Since the 1980 error, we have heard no complaints from the public on this matter. This rule conforms the Appendix to Part 10 to, both to the applicable SORNs and current DOT practice and thus will have no substantive impact on the public. Therefore, DOT finds that there is good cause under 5 U.S.C. 553(d)(3) to make this rule effective less than 30 days after publication in the **Federal Register**.

The DOT also finds that notice and comment are unnecessary and that the rule is exempt from prior notice and comment requirements under 5 U.S.C. 553(b)(3)(A). Notice and comment would be contrary to the public interest because in the absence of these exemptions, DOT may be required to provide an accounting of disclosures to the subject of an investigation, thereby permitting the subject of the investigation to take measures to impede the investigation, as by destroying evidence or intimidating witnesses. Additionally, DOT would be required to disclose the identity of informants who promised information under an express promise of confidentiality. This would hamper DOT's ability to obtain complete and accurate statements from witnesses and chill individuals from providing DOT with information necessary for investigations. These disclosures would not serve the public interest of ensuring that investigations are as accurate as possible. Interested persons are still welcome to comment, and DOT will respond to any comments received on or before the closing of the comment period (see **DATES**).

Regulatory Analysis and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The DOT has considered the impact of this rulemaking action under Executive Orders 12866 and 13563 (January 18, 2011, ''Improving Regulation and Regulatory Review''), and the DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979). The DOT has determined that this action does not constitute a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of DOT regulatory policies and procedures. This rule has not been reviewed by the Office of Management and Budget. There are no costs associated with this rule.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act, 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply. Even so, DOT has evaluated the effects of these changes on small entities and does not believe that this rule would impose any costs on small entities because the reporting requirements themselves are not changed and because the rule applies only to information on individuals that is maintained by the Federal Government. Therefore, I hereby certify that this proposal will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

The agency has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must

also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 3.c.5 of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Highway Administration's implementing procedures, ''[p]romulgation of rules, regulations, and directives.'' 23 CFR 771.117(c)(20). The purpose of this rulemaking is to make a correction to the Appendix to DOT's Privacy Act regulations. The agency does not anticipate any environmental impacts and there are no extraordinary circumstances present in connection with this rulemaking.

D. Executive Order 13132

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that it does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the preparation of a Federalism Assessment is not necessary.

E. Executive Order 13084

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because it has no effect on Indian Tribal Governments, the funding and consultation requirements of Executive Order 13084 do not apply.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The DOT has determined that this action does not contain a collection of information requirement for the purposes of the PRA.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 109 Stat. 48, March 22, 1995) requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. The UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local, or tribal Government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, $143.1 million or more in any one year (adjusted for inflation), an UMRA analysis is required. This rule would not impose Federal mandates on any State, local, or tribal governments or the private sector.

List of Subjects in 49 CFR Part 10

Penalties, Privacy.

In consideration of the foregoing, DOT amends part 10 of title 49, Code of Federal Regulations, as follows:

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

Authority: 5 U.S.C. 552a; 49 U.S.C. 322.

■ 2. Amend the Appendix to Part 10 by:

■ a. In Part I, adding paragraph D; and

■ b. In Part II, adding paragraphs B.3., D.4, and F.4. and revising paragraph F.2.

The revisions and additions read as follows:

Appendix to Part 10—Exemptions

Part I. General Exemptions

* * * * *

D. General Investigations Record System, maintained by the Office of Investigations and Security, Office of the Secretary (DOT/OST 016).

* * * * *

Part II. Specific Exemptions

* * * * *

B. * * *

3. General Investigations Record System, maintained by the Office of Investigations and Security, Office of the Secretary (DOT/OST 016).

* * * * *

D. * * *

4. Personnel Security Records System, maintained by the Office of Investigations and Security, Office of the Secretary (DOT/OST 035).

* * * * *

F. * * *

2. Personnel Security Records System, maintained by the Office of Investigations and Security, Office of the Secretary (DOT/OST 035).

* * * * *

4. General Investigations Record System, maintained by the Office of Investigations and Security, Office of the Secretary (DOT/OST 016).

* * * * *

Issued in Washington, DC, on September 24th, 2014, under authority delegated in 49 CFR 1.27(c).

Kathryn B. Thomson,

General Counsel.

[FR Doc. 2014–23470 Filed 10–1–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 355, 365, 369, 383, 384, 385, 387, 390, 391, 392, 395, and 397

[Docket No. FMCSA–2014–0262]

RIN 2126–AB76

General Technical, Organizational, and Conforming Amendments to the Federal Motor Carrier Safety Regulations

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

ACTION: Final rule.

SUMMARY: FMCSA amends its regulations by making technical corrections throughout title 49 of the Code of Federal Regulations (CFR), subtitle B, chapter III. The Agency is making minor changes to correct errors and omissions, ensure conformity with Office of the Federal Register style guidelines, update references, and improve clarity and consistency of certain regulatory provisions. This rule does not make any substantive changes to the affected regulations.

DATES: Effective October 2, 2014. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of October 2, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Strasser, Federal Motor Carrier Safety Administration, Office of the Chief Counsel, Regulatory Affairs Division, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 366–0286 or via email at *alan.strasser@dot.gov.* Office hours are from 8:00 a.m. to 5:30 p.m. e.t., Monday through Friday, except Federal holidays.

If you have questions on viewing the docket, please call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

Congress delegated certain powers to regulate interstate commerce to the United States Department of Transportation (DOT or Department) in numerous pieces of legislation, most notably in section 6 of the Department of Transportation Act (DOT Act) (Pub. L. 85–670, 80 Stat. 931 (1966)). Section 55 of the DOT Act transferred to the Department the authority of the former Interstate Commerce Commission (ICC)

to regulate the qualifications and maximum hours-of-service of employees, the safety of operations, and the equipment of motor carriers in interstate commerce. See 49 U.S.C. 104. This authority, first granted to the ICC in the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, Aug. 9, 1935), now appears in chapter 315 of title 49 of the U.S. Code. The regulations issued under this authority became known as the Federal Motor Carrier Safety Regulations, appearing generally at 49 CFR parts 350–399. The administrative powers to enforce chapter 315 were also transferred from the ICC to the DOT in 1966 and appear in chapter 5 of title 49 of the U.S. Code. The Secretary of the U.S. DOT (Secretary) delegated oversight of these provisions to the Federal Highway Administration (FHWA), a predecessor agency of the FMCSA. The FMCSA Administrator has been delegated authority under 49 CFR 1.87 to carry out the motor carrier functions vested in the Secretary.

Between 1984 and 1999, a number of statutes added to FHWA's authority. Various statutes authorize the enforcement of the FMCSRs, the Hazardous Materials Regulations (HMRs), and the Commercial Regulations, and provide both civil and criminal penalties for violations of these requirements. These statutes include the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2832, Oct. 30, 1984), codified at 49 U.S.C. chapter 311, subchapter III; the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, 100 Stat. 3207–170, Oct. 27, 1986), codified at 49 U.S.C. chapter 313; the Hazardous Materials Transportation Uniform Safety Act of 1990, as amended (Pub. L. 101–615, 104 Stat. 3244, Nov. 16, 1990), codified at 49 U.S.C. chapter 51; and the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803, Dec. 29, 1995), codified at 49 U.S.C. chapters 131–149.

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748, Dec. 9, 1999) established FMCSA as a new operating administration within the DOT, effective January 1, 2000. The motor carrier safety responsibilities previously assigned to both the ICC and the FHWA are now assigned to FMCSA. Congress expanded, modified, and amended FMCSA's authority in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Pub. L. 107–56, 115 Stat. 272, Oct. 26, 2001), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005), the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572, June 6, 2008), and the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405, July 6, 2012).

The provisions of the FMCSRs amended by this rule are based on the statutes detailed above. The legal authority for each of those provisions was explained when the requirement was originally adopted and is noted at the beginning of each part in title 49 of the CFR. Title 49 CFR subtitle B, chapter III, contains all of the FMCSRs.

The Administrative Procedure Act (APA) (5 U.S.C. 551–706) specifically provides exceptions to its notice and public comment rulemaking procedures where the Agency finds there is good cause (and incorporates the finding and a brief statement of reasons therefore in the rules issued) to dispense with them. Generally, good cause exists where the Agency determines that notice and public procedures are impractical, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)). The amendments made in this final rule merely correct inadvertent errors and omissions, remove or update obsolete references, and make minor changes to improve clarity and consistency. The technical amendments do not impose any new requirements, nor do they make any substantive changes to the CFR. For these reasons, the FMCSA finds good cause that notice and public comment on this final rule is unnecessary; thus this rule will be effective on the date of publication in the **Federal Register**.

Background

This document makes editorial changes to correct inaccurate references and citations, improve clarity, and fix errors. The reasons for each of these minor revisions are set out below, in a section-by-section description of the changes. These amendments do not impose any new requirements, nor do they make substantive changes to the CFR.

Section-by-Section Analysis

This section-by-section analysis describes the technical amendment provisions in numerical order.

Part 355

Appendix A to Part 355. Under the section for ''Regulatory Review,'' the paragraph titled ''Hours of Service of Drivers'' is revised to account for the final rules of December 27, 2011 (76 FR 81134) and October 28, 2013 (78 FR 64179). In addition, new text summarizing requirements for passenger carriers is added.

Part 365

Section 365.405. In paragraph (a)(1), the name of the office that receives filings of Form OP–FC–1 is changed from the former name ''IT Operations Division (MC–RIO)'' to ''Office of Registration and Safety Information (MC–RS).''

Section 365.411. In paragraph (b), the name of the office that receives filings of protests and petitions for reconsideration is changed from the former ''IT Operations Division (MC–RIO)'' to ''Office of Registration and Safety Information (MC–RS).''

Section 365.413. In paragraph (b), the name of the office that receives filings of protests and petitions for reconsideration is changed from the former ''IT Operations Division (MC–RIO)'' to ''Office of Registration and Safety Information (MC–RS).''

Part 369

Section 369.6. The phrase ''Office of Information Technology'' (MC–RI) is removed and replaced with the phrase ''Office of Registration and Safety Information (MC–RS)'' to reflect the proper name of the office with such responsibilities.

Part 383

Section 383.3. The Interpretative rule referenced in Question 18 and responsive Guidance to § 383.3 is removed. Question 18 was published April 4, 1997 (65 FR 16394). FMCSA rescinds that interpretation and motor carriers should no longer rely on that guidance since it was made obsolete by the Hazardous Materials Transportation Uniform Safety Act of 1990 § 4, (Pub. L. 101–615, Nov. 16, 1990), which granted the Pipeline and Hazardous Materials Safety Administration jurisdiction over intrastate hazardous materials. The Hazardous Materials Regulations (HMRs) apply to the transport of hazardous materials requiring placarding, regardless of the type of vehicle utilized. Also note that this deletion ensures internal consistency with related guidance. Specifically, guidance to § 383.97, Question 7, clarifies that all drivers of vehicles required to be placarded need to have a Commercial Driver's License (CDL) with an HM endorsement.

Section 383.5. First, under the definition for ''Conviction,'' the word ''probated'' is removed and replaced with the word ''prorated'' to correct an error. Second, the definition of commercial motor vehicle is amended to add the names of the three vehicle

groups listed in 49 CFR 383.91(a): Combination Vehicle (Group A), Heavy Straight Vehicle (Group B), and those vehicles that meet neither the Group A nor Group B requirements (Group C). This amendment does not change the applicability of the commercial driver's license (CDL) requirements in any way, but provides a practical means for the reader to understand how the four individual components of the definition in § 383.5 align with the three vehicle groups listed in § 383.91. As such, the amended definition provides a valuable reference tool for CDL applicants and holders, employers, and motor carrier enforcement personnel by eliminating the need to reference multiple sections within part 383.

Section 383.73. The March 25, 2013 CDL Testing and CLP Standards final rule (78 FR 17875) made revisions to several provisions of parts 383 and 384 to include a prohibition on the transfer of Commercial Learner's Permits (CLPs) as provided in the Commercial Driver's License Information System (CDLIS) State Procedures Manual incorporated by reference in 49 CFR 384.107. The March 2013 final rule inadvertently omitted from paragraph (n)(1) conforming changes to reflect the CLP transfer prohibition. To correct this omission, first, in paragraph (n)(1), the phrase ''or upgraded CLP, or an initial, renewed'' is added after the word ''renewed.'' Also, after the first instance of the word ''upgraded'' the phrase ''or transferred CLP or'' is removed. The other change in paragraph (n)(1) concerns knowledge and skills test scores verification before a transferred CDL is issued. Verification of test scores is not needed when a CDL is transferred to another State because the scores were previously verified when the CDL was initially issued in the former State of record. This change is consistent with the requirements in §§ 383.135(c) and 384.225 that exclude the test scores from being part of the CDLIS driver record (as defined by 49 CFR 383.5) that is required to be sent to the new State of record upon transfer of a CDL. Therefore, States cannot and need not enforce the knowledge and skills test scores verification requirements for a CDL transferred to a new State of record under § 383.73(n)(1). This amendment addresses this issue by removing the requirement to verify knowledge and skills test scores when a CDL is transferred to a new State of record.

In paragraph (o)(4), after the third instance of the word ''medical'' the following phrase is added: ''examiner's certificate is voided or rescinded or a medical.'' This clarifies statutory authority granted to FMCSA under 49 U.S.C. section 31149(c)(2) for FMCSA to void a medical examiner's certificate for a CLP or CDL under certain circumstances.

Part 384

Section 384.107. The entire section was revised according to the incorporation by reference drafting requirements of the Office of the Federal Register. In paragraph (b), the incorporation by reference of the AAMVA ''Commercial Driver's License Information System (CDLIS) State Procedures Manual,'' Release 5.2.0, February 2011, is replaced by the updated version, Commercial Driver's License Information System (CDLIS) State Procedures Manual,'' Release 5.3.2.1, August 2013. This change reflects a routine update of the referenced manual to include clarifications of procedures related to the medical examiner's certification as part of the CDL, modification of procedures to reflect the Federal requirements in the CDL Testing and CLP Standards final rule and the renumbering of sections and cross-references. Paragraph (c) is deleted to address the incorporation by reference drafting requirements of the Office of the Federal Register. The scope of the incorporation by reference is otherwise unchanged.

Section 384.206. Paragraph (a)(1) is amended by clarifying that CLPs cannot be transferred from one State to another State. The March 25, 2013 CDL Testing and CLP standards final rule made revisions to several sections of 49 CFR parts 383 and 384 to include a prohibition on the transfer of CLPs, but conforming changes to this section were mistakenly omitted. This amendment addresses this omission.

Section 384.209. Paragraph (b)(2) is amended by adding the phrase ''from a foreign country'' after the phrase ''a person'' to implement MAP–21 section 32203(b) requiring reporting of convictions of a foreign commercial driver to the Federal Convictions and Withdrawal Database. The current language could be seen as applying to all commercial drivers from the United States, but that contradicts the plain language of the statute limiting application to a foreign commercial driver.

Section 384.212. In paragraph (b), the phrase ''CLP or,'' inadvertently appears twice. The March 25, 2013 CDL Testing and CLP Standards final rule made revisions to several sections of 49 CFR parts 383 and 384 to include a prohibition on the transfer of CLPs, but mistakenly omitted conforming changes to this section. This amendment addresses that omission.

Section 384.225. Paragraph (e) is amended to ensure the language properly correlates with the section's lead in language ''the state must,'' and, thus, is grammatically correct. The word ''allow'' is inserted and the word ''may'' is replaced by the word ''to'' for clarity.

Paragraph (f) is amended by changing ''The'' to ''Ensure the'' at the beginning of the paragraph for grammatical precision. Also, the phrase regarding the National Law Enforcement Telecommunications System (NLETS) is removed, since NLETS is not maintaining the CDLIS system, but only has the ability to access CDLIS data.

Section 384.228. Paragraph (j)(2) is moved to paragraph (h)(3). Movement of this text reflects new requirements placed in paragraph (h)(1) as part of the March 25, 2013 CDL Testing and CLP Standards final rule (78 FR 17875), which changed background checks from an annual requirement to a one-time event. This is a conforming amendment to retain existing requirements for such background checks and to place such requirements in the appropriate place within § 384.228.

Section 384.229. Paragraph (b) is amended by deleting the sentence beginning after ''examiners,'' which reads: ''For third party testers and examiners who were granted the training and skills testing exception under § 383.75(a)(7), the covert and overt monitoring must be performed at least once every year;.'' The March 25, 2013 CDL Testing and CLP Standards final rule (78 FR 17875) removed the exception under § 383.75(a)(7) referenced in § 384.229. This is a conforming amendment to clarify that the exception was deleted.

Section 384.305. In the final untitled paragraph, the phrase ''Approved by the Office of Management and Budget under control number 2125–0542'' is deleted for clarity. The reference to a specific OMB information collection is outdated and confusing in the context of the State certification requirements.

Part 385

Section 385.308. Paragraph (a)(1) is corrected by adding the word ''motor'' after ''commercial'' and before ''vehicle'' to provide the proper term ''commercial motor vehicle,'' as utilized in part 385 and defined in § 385.3.

Section VII of Part 385, Appendix B. In the ''List of Acute and Critical Regulations'' the following paragraph regarding § 397.101(d) is deleted: ''Requiring or permitting the operation of a motor vehicle containing highway route-controlled quantity, as defined in

§ 173.403, of radioactive materials that is not accompanied by a written route plan.'' This provision was mistakenly added to part 385, Appendix B and will therefore be deleted.

Part 387

Section 387.15. The references to OMB numbers 2125–0074 and 2125–0075 are deleted for clarity in Illustrations I and II respectively. Such references to specific OMB information collection approvals are outdated, confusing, and superfluous in the context of the rules' sample illustrations of insurance and surety bond forms.

Section 387.39. The reference to OMB approval under control number 2125–0518 is deleted for clarity. This reference to a specific OMB information collection approval is outdated, confusing, and superfluous in the context of the rules' sample illustration of a motor carrier public liability surety bond.

Part 390

Section 390.5. First, under the definition of ''Conviction,'' the word ''probated'' is removed and replaced with the word ''prorated'' to correct an error. Second, a definition of ''Crash'' that cross-references the existing definition of ''Accident'' in 49 CFR 390.5 is added to clarify that these terms are synonymous.

Section 390.19. In paragraph (d), the name of the office to file forms MCS–150, MCS–150B and MCS–150C is changed in the first sentence from ''Office of Information Management'' to ''Office of Registration and Safety Information.'' Also, in the first sentence after the word ''with'' the word ''the'' is inserted to correct the grammar. In the second sentence, the office to file forms with is changed from ''Office of Information Management, MC–RIO'' to ''Office of Registration and Safety Information (MC–RS).''

Section 390.40. The cross-reference to § 386.72(b)(1) in paragraph (j) is an error and is replaced with the correct cross-reference to section 386.72(b)(3).

Part 391

Section 391.63. The reference to approval under OMB control number 2125–0081 is deleted for clarity. This reference to a specific OMB information collection approval is outdated, confusing, and superfluous in the context of the rules' description of the obligations for motor carriers employing multiple-employer drivers.

Part 392

Section 392.5. In paragraph (a)(3), the word ''and'' is changed to ''or'' to correct an error.

Part 395

Section 395.8. The reference to OMB approval under control number 2125–0016 is deleted for clarity. This reference to a specific OMB information collection approval is outdated, confusing, and superfluous in the context of the rule's sample illustration of regulations, which generally outline drivers' record of duty status obligations and provide a sample duty status graph grid.

Part 397

Section 397.69. Paragraph (b) is amended to reflect statutory changes under section 33013(b) of MAP–21, which amended 49 U.S.C. 5125(c)(1) to require publication of highway route designations in the Department's hazardous materials route registry under 49 U.S.C. 5112(c). The citation to section 105(b)(4) of the Hazardous Materials Transportation Act is deleted since it is now obsolete. Language regarding an effective date of November 14, 1996, is also deleted since it is also obsolete.

In paragraph (c), the phrase ''of this subpart'' is amended to read ''of this part'' to correct an inaccurate reference.

Section 397.73. In paragraph (a), footnote 2 is deleted and replaced by an internet link for convenience. Also, the reference to FMCSA is replaced by the ''Federal Highway Administration (FHWA),'' since that latter agency is the correct publisher of the ''Manual on Uniform Traffic Control Devices for Streets and Highways.''

In paragraph (b), additional text is added since section 33013(a) of MAP–21 amended 49 U.S.C. section 5112(c) to add State reporting requirements, which include the name of the responsible agency for hazmat materials highway route designations. In addition, the phrase ''regarding designations existing on November 14, 1994'' is deleted as obsolete. Also, based on a new requirement from section 33013(b) of MAP- 21, a State or Tribally-designated route is effective only after it is published in FMCSA's Hazardous Materials Route Registry. This requirement is added as new paragraph (c).

The reference to OMB approval under control number 2125–0554 at the end of the section is deleted for clarity. Such a reference to a specific OMB information collection approval is outdated, confusing, and superfluous in the context of the rule's public information and reporting requirements.

Section 397.103. Based on a new publication requirement from section 33013(b) of MAP–21, the following sentence will be added as a new paragraph (c)(3) to clarify when a new routing designation is effective for radioactive materials: ''The route is published in FMCSA's Hazardous Materials Route Registry.''

Rulemaking Analyses

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, as supplemented by Executive Order 13563 (76 FR 3821, January 18, 2011), or within the meaning of the DOT regulatory policies and procedures (44 FR 1103, February 26, 1979). Thus, the Office of Management and Budget (OMB) did not review this document. We expect the final rule will have minimal costs; therefore, a full regulatory evaluation is unnecessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA has evaluated the effects of this rule on small entities. Because the rule makes only minor editorial corrections and places no new requirements on the regulated industry, FMCSA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

The final rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $141.9 million (which is the value of $100 million in 2010 after adjusting for inflation) or more in any 1 year.

E.O. 13132 (Federalism)

A rule has implications for Federalism under section 1(a) of Executive Order 13132 if it has ''substantial direct effects on the States, on the relationship between national government and the States, or on the distribution of power and responsibilities among various levels of government.'' FMCSA has determined that this rule will not have substantial direct effects on States, nor will it limit the policymaking discretion of States. Nothing in this document preempts or

modifies any provision of State law or regulation, imposes substantial direct unreimbursed compliance costs on any State, or diminishes the power of any State to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications warranting the application of E.O. 13132.

E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 titled, ''Consultation and Coordination with Indian Tribal Governments,'' because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that no new information collection requirements are associated with this final rule.

National Environmental Policy Act

FMCSA analyzed this final rule for the purpose of ascertaining the applicability of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our Environmental Procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action would not have any effect on the quality of the environment. In addition, this final rule is categorically excluded from further analysis and documentation under the Categorical Exclusion (CE) in paragraph 6(b) of Appendix 2 of FMCSA Order 5610.1. This CE addresses minor editorial corrections such as found in this rulemaking; therefore preparation of an environmental assessment or environmental impact statement is not necessary.

The FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 42 U.S.C. 7506(c)), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

E.O. 12898 (Environmental Justice)

This technical amendment final rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994). Executive Order 12898 establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. FMCSA determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the substance of any of the FMCSRs.

E.O. 13211 (Energy Effects)

FMCSA has analyzed this rule under Executive Order 13211 titled, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' The Agency has determined that it is not a ''significant energy action'' under that Executive Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, no Statement of Energy Effects is required.

E.O. 13045 (Protection of Children)

Executive Order 13045 titled, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. As discussed previously, this rule is not economically significant. Therefore, no analysis of the impacts on children is required.

E.O. 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630 titled, ''Governmental Actions and Interference with Constitutionally Protected Property Rights.''

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. Because FMCSA does not intend to adopt technical standards, there is no need to submit a separate statement to OMB on this matter.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–447, Division H, Title I, 118 Stat. 2809 at 3268, Dec. 8, 2004) requires DOT and certain other Federal agencies to conduct a privacy impact assessment of each rule that will affect the privacy of individuals. Because this final rule will not affect the privacy of individuals, FMCSA did not conduct a separate privacy impact assessment.

List of Subjects

49 CFR Part 355

Highway safety, Intergovernmental relations, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Mexico, Motor carriers, Moving of household goods.

49 CFR Part 369

Reporting and recordkeeping requirements.

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety and motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Incorporation by reference, and Motor carriers.

49 CFR Part 385

Administrative practice and procedure, Highway safety, Incorporation by reference. Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 392

Driving of Commercial Motor Vehicles.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 397

Administrative practice and procedure, Highway safety, Intergovernmental relations, Motor carriers, Parking, Radioactive materials, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, FMCSA is amending 49 CFR chapter III, parts 355, 365, 369, 383, 384, 385, 387, 390, 391, 392, 395, and 397, as set forth below:

PART 355—COMPATIBILITY OF STATE LAWS AND REGULATIONS AFFECTING INTERSTATE MOTOR CARRIER OPERATIONS

■ 1. The authority citation for part 355 continues to read as follows:

Authority: 49 U.S.C. 504 and 31101 *et seq.;* 49 CFR 1.87.

■ 2. Amend appendix A to part 355 by revising the paragraphs titled ''Hours of Service of Drivers'' to read as follows:

Appendix A to Part 355—Guidelines for the Regulatory Review

* * * * *

Hours of Service of Drivers

The following is a high-level summary of the hours-of-service regulations governing property and passenger carriers. The description below outlines only some of the major provisions, but does not capture all the detailed requirements. For the detailed provisions, which include rest breaks, sleeper berth, and records of duty status issues, see part 395 of this subchapter.

The hours-of-service regulations prohibit both property and passenger carriers from allowing or requiring any driver to drive as follows:

1. *Property.* More than 11 hours after 10 consecutive hours off duty within a consecutive 14-hour duty period, and more than 60/70 hours on duty in 7/8 consecutive days. A driver may restart a 7/8 consecutive day period after taking 34 or more consecutive hours off duty, which includes two periods from 1 a.m. to 5 a.m., home terminal time. The restart may be used only once per week, or 168 hours, measured from the beginning of the previous restart.

2. *Passenger.* More than 10 hours after 8 consecutive hours off duty within a 15-hour duty period, and more than 60/70 hours on duty in 7/8 consecutive days.

* * * * *

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

■ 3. The authority citation for part 365 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; and 49 CFR 1.87.

§ 365.405 [Amended]

■ 4. Amend § 365.405(a)(1) by removing the phrase ''IT Operations Division (MC–RIO)'' and adding in its place the phrase ''Office of Registration and Safety Information (MC–RS)''.

§ 365.411 [Amended]

■ 5. Amend § 365.411(b) by removing the phrase ''IT Operations Division (MC–RIO)'' and adding in its place the phrase ''Office of Registration and Safety Information (MC–RS)''.

§ 365.413 [Amended]

■ 6. Amend § 365.413(b) introductory text by removing the phrase ''IT Operations Division (MC–RIO)'' and adding in its place the phrase ''Office of Registration and Safety Information (MC–RS)''.

PART 369—REPORTS OF MOTOR CARRIERS

■ 7. The authority citation for part 369 continues to read as follows:

Authority: 49 U.S.C. 14123; 49 CFR 1.87.

§ 369.6 [Amended]

■ 8. Amend § 369.6 by removing the phrase ''Office of Information Technology (MC–RI)'' and adding in its place the phrase ''Office of Registration and Safety Information (MC–RS)''.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 9. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; and 49 CFR 1.87.

■ 10. Amend § 383.5 by revising the definitions of ''Commercial motor vehicle (CMV)'' and ''Conviction'' to read as follows:

§ 383.5 Definitions.

* * * * *

Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle is a—

(1) Combination Vehicle (Group A)—having a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or

(2) Heavy Straight Vehicle (Group B)—having a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or

(3) Small Vehicle (Group C)—(i) that does not meet Group A or B requirements;

(ii) Is designed to transport 16 or more passengers, including the driver; or

(iii) Is of any size and is used in the transportation of hazardous materials as defined in this section.

* * * * *

Conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or

not the penalty is rebated, suspended, or prorated.

* * * * *

■ 11. Amend § 383.73 by revising paragraphs (n)(1) and (o)(4)(i) introductory text to read as follows:

§ 383.73 State procedures.

* * * * *

(n) * * *

(1) Prevent the issuance of an initial, renewed or upgraded CLP or an initial, renewed, upgraded, or transferred CDL when the results of transactions indicate the applicant is unqualified. These controls, at a minimum, must be established for the following transactions: State, CDLIS, and PDPS driver record checks; and Social Security Number verification. Knowledge and skills test scores verification controls must be established for an initial, renewed, or upgraded CDL.

* * * * *

(o) * * *

(4) * * * (i) Beginning January 30, 2012, if a driver's medical certification or medical variance expires, or FMCSA notifies the State that a medical examiner's certificate is voided or rescinded or a medical variance was removed or rescinded, the State must:

* * * * *

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 12. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301, *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–59, 113 Stat. 1753, 1767; and 49 CFR 1.87.

■ 13. Revise § 384.107 to read as follows:

§ 384.107 Matter incorporated by reference.

(a) *Incorporation by reference.* This part includes references to certain matter or materials. The text of the materials is not included in the regulations contained in this part. The materials are hereby made a part of the regulations in this part. The Director of the Office of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Office of the Federal Register and specified in the regulation are incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. All of the materials incorporated by reference are available from the sources listed below and available for inspection at the Department of Transportation Library, 1200 New Jersey Ave. SE., Washington, DC 20590–0001; telephone is (202) 366–0746. These documents are also available for inspection and copying as provided in 49 CFR part 7. They are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) The American Association of Motor Vehicle Administrators (AAMVA), 4301 Wilson Boulevard, Suite 400, Arlington, VA 22203, (703) 522–1300, *http://www.aamva.org.*

(1) ''Commercial Driver's License Information System (CDLIS) State Procedures Manual,'' Release 5.3.2.1, August 2013, incorporation by reference approved for §§ 384.225(f) and 384.231(d).

(2) [Reserved]

■ 14. Amend § 384.206 by revising (a)(1) introductory text to read as follows:

§ 384.206 State record checks.

(a) * * *

(1) Before issuing, renewing, or upgrading a CLP or issuing, renewing, upgrading or transferring CDL to any person, the driver's State of record must, within the period of time specified in § 384.232, check its own driver records as follows:

* * * * *

§ 384.209 [Amended]

■ 15. Amend § 384.209(b)(2) by adding the phrase ''from a foreign country'' after the phrase ''a person'' and before the phrase ''who is unlicensed.''

■ 16. Revise § 384.212(b) to read as follows:

§ 384.212 Domicile requirement.

* * * * *

(b) The State must require any person holding a CDL issued by another State to apply for a transfer CDL from the State within 30 days after establishing domicile in the State, as specified in § 383.71(c) of this subchapter.

■ 17. Amend § 384.225 by revising paragraph (e) introductory text and paragraph (f) to read as follows:

§ 384.225 CDLIS driver recordkeeping.

* * * * *

(e) Only allow the following users or their authorized agents to receive the designated information:

* * * * *

(f) Ensure the content of the report provided a user authorized by paragraph (e) of this section from the CDLIS driver record is comparable to the report that would be generated by a CDLIS State-to-State request for a CDLIS driver history, as defined in the ''CDLIS State Procedures Manual'' (incorporated by reference, see § 384.107(b)), and must include the medical certification status information of the driver in paragraph (a)(2) of this section. This does not preclude authorized users from requesting a CDLIS driver status.

■ 18. Amend § 384.228 by adding paragraph (h)(3) and revising paragraph (j) to read as follows:

§ 384.228 Examiner training and record checks.

* * * * *

(h) * * *

(3) Criteria for not passing the criminal background check must include at least the following: (i) Any felony conviction within the last 10 years; or (ii) Any conviction involving fraudulent activities.

(j) Rescind the certification to administer CDL tests of all test examiners who do not successfully complete the required refresher training every 4 years.

* * * * *

■ 19. Revise § 384.229(b) to read as follows:

§ 384.229 Skills test examiner auditing and monitoring.

* * * * *

(b) At least once every 2 years, conduct covert and overt monitoring of examinations performed by State and third party CDL skills test examiners.

* * * * *

§ 384.305 [Amended]

■ 20. Amend § 384.305 by removing the phrase ''(Approved by the Office of Management and Budget under control number 2125–0542)'' at the end of the section.

PART 385—SAFETY FITNESS PROCEDURES

■ 21. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 13901–13905, 31133, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311; Sec. 408, Pub. L. 104–88; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.87.

§ 385.308 [Amended]

■ 22. Amend § 385.308(a)(1) by adding the word ''motor'' after the word ''commercial'' and before the word ''vehicle.''

Appendix B to Part 385 [Amended]

■ 23. In Appendix B to Part 385, section VII, List of Acute and Critical Regulations, remove the entry for § 397.101(d), which reads ''Requiring or permitting the operation of a motor vehicle containing highway route-controlled quantity, as defined in § 173.403, of radioactive materials that is not accompanied by a written route plan.''

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

■ 24. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, 31139, and 31144; and 49 CFR 1.87.

§ 387.15 [Amended]

■ 25. Amend § 387.15 as follows:
■ a. Remove the designation ''OMB No. 2125–0074'' under the center heading ''Illustration I'' and following the phrase ''Form Approved.''
■ b. Remove the phrase ''(Form approved by Office of Management and Budget under control no. 2125–0075)'' under the center heading ''Illustration II'' and following the phrase ''Form MCS–82 (4/83).''

§ 387.39 [Amended]

■ 26. Amend § 387.39 by removing the phrase ''(Approved by the Office of Management and Budget under control number 2125–0518)'' at the end of the section.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 27. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 504, 508, 31132, 31133, 31136, 31144, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677–1678; sec. 212, 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as transferred by sec. 4114 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743–1744); sec. 4136, Pub. L. 109–59, 119 Stat. 114, 1745; sections 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; and 49 CFR 1.87.

■ 28. Amend § 390.5 as follows:
■ a. In the definition of ''Conviction'' remove the word ''probated'' and add in its place the word ''prorated.''
■ b. Add a definition for ''Crash'' in alphabetical order.

§ 390.5 Definitions.

* * * * *

Crash—See accident.

* * * * *

■ 29. Revise § 390.19(d) to read as follows:

§ 390.19 Motor carrier, hazardous material shipper, and intermodal equipment provider identification reports.

* * * * *

(d) *Where to file.* The required form under paragraph (a) of this section must be filed with the FMCSA Office of Registration and Safety Information. The form may be filed electronically according to the instructions at the Agency's Web site, or it may be sent to Federal Motor Carrier Safety Administration, Office of Registration and Safety Information (MC–RS), 1200 New Jersey Avenue SE., Washington, DC 20590.

* * * * *

§ 390.40 [Amended]

■ 30. Amend § 390.40(j) by removing the reference ''§ 386.72(b)(1)'' and adding in its place ''§ 386.72(b)(3)''.

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 31. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

§ 391.63 [Amended]

■ 32. Amend § 391.63 by removing the phrase ''(Approved by the Office of Management and Budget under control number 2125–0081)''.

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

■ 33. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 504, 13902, 31136, 31151, 31502; Section 112 of Pub. L. 103–311, 108 Stat. 1673, 1676 (1994), as amended by sec. 32509 of Pub. L. 112–141, 126 Stat. 405, 805 (2012); and 49 CFR 1.87.

§ 392.5 [Amended]

■ 34. Amend § 392.5(a)(3) introductory text by removing the word ''and'' and adding in its place the word ''or.''

PART 395—HOURS OF SERVICE OF DRIVERS

■ 35. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31137, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106–159 (as transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109–59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110–432, 122 Stat. 4860–4866; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

§ 395.8 [Amended]

■ 36. Amend § 395.8 by removing the phrase ''(Approved by the Office of Management and Budget under control number 2125–0016)'' at the end of the section.

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

■ 37. The authority citation for part 397 continues to read as follows:

Authority: 49 U.S.C. 322; 49 CFR 1.87. Subpart A also issued under 49 U.S.C. 5103, 31136, 31502, and 49 CFR 1.97. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

■ 38. Amend § 397.69 by revising paragraphs (b) and (c) to read as follows:

§ 397.69 Highway routing designations; preemption.

* * * * *

(b) Except as provided in §§ 397.75 and 397.219, an NRHM route designation made in violation of paragraph (a) of this section is preempted pursuant to 49 U.S.C. 5125(c).

(c) A highway routing designation established by a State, political subdivision, or Indian tribe before November 14, 1994 is subject to preemption in accordance with the preemption standards in paragraphs (a)(1) and (a)(2) of § 397.203.

* * * * *

■ 39. Revise § 397.73 to read as follows:

§ 397.73 Public information and reporting requirements.

(a) Public information. Information on NRHM routing designations must be made available by the States and Indian tribes to the public in the form of maps, lists, road signs or some combination thereof. If road signs are used, those signs and their placements must comply with the provisions of the Manual on Uniform Traffic Control Devices for Streets and Highways, published by the Federal Highway Administration

(FHWA), particularly the Hazardous Cargo signs identified as R14–2 and R14–3 shown in Section 2B–62 of that Manual. This publication may be accessed free of charge on the Internet at *http://mutcd.fhwa.dot.gov/.*

(b) Reporting and publishing requirements. Each State or Indian tribe, through its routing agency, shall provide information identifying all NRHM routing designations that exist within its jurisdiction to the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC–EC), 1200 New Jersey Ave. SE., Washington, DC 20590–0001. States shall also submit to FMCSA the current name of the State agency responsible for NHRM highway routing designations. The State or Indian tribe shall include descriptions of these routing designations, along with the dates they were established. This information may also be published in each State's official register of State regulations. Information on any subsequent changes or new NRHM routing designations shall be furnished within 60 days after establishment to the FMCSA. This information will be available from the FMCSA, consolidated by the FMCSA, and published annually in whole or as updates in the **Federal Register**. Each State may also publish this information in its official register of State regulations.

(c) A State or Tribally-designated route is effective only after it is published in the **Federal Register** in FMCSA's Hazardous Materials Route Registry.

■ 40. Amend § 397.103 by adding a new paragraph (c)(3) to read as follows:

§ 397.103 Requirements for State routing designations.

* * * * *

(c) * * *

(3) The route is published in FMCSA's Hazardous Materials Route Registry.

* * * * *

Issued under authority delegated in 49 CFR 1.87 on: September 23, 2014.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2014–23433 Filed 10–1–14; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register

Vol. 79, No. 191

Thursday, October 2, 2014

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.

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 2014–09]

Rulemaking Petition: Federal Office

AGENCY: Federal Election Commission.

ACTION: Petition for Rulemaking: Notice of Availability.

SUMMARY: On August 28, 2014, the Commission received a Petition for Rulemaking from National Convention PBC. The petition asks the Commission to amend 11 CFR 100.4 to include delegates to a constitutional convention in the definition of ''federal office.'' The Commission seeks comments on this petition.

DATES: Statements in support of or in opposition to the petition must be submitted on or before November 3, 2014.

ADDRESSES: All comments must be in writing. Comments may be submitted electronically via the Commission's Web site at *http://www.fec.gov/fosers/*. Commenters are encouraged to submit comments electronically to ensure timely receipt and consideration. Alternatively, comments may be submitted in paper form. Paper comments must be sent to the Federal Election Commission, Attn.: Adav Noti, Acting Associate General Counsel, 999 E Street NW., Washington, DC 20463. Each comment must include the full name and postal service address of the commenter, and of each commenter if filed jointly, or it will not be considered. The Commission will post comments on its Web site at the conclusion of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Emma K. Lewis, Office of General Counsel, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On August 28, 2014, the Commission received a Petition for Rulemaking from National Convention PBC regarding the Commission's regulation defining ''federal office,'' 11 CFR 100.4. The regulation provides that ''*Federal office* means the office of President or Vice President of the United States, Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.'' The petition asks the Commission to amend 11 CFR 100.4 to add ''a Delegate to a constitutional convention for proposing amendments to the Constitution of the United States.'' The Commission seeks comments on the petition.

Copies of the Petition for Rulemaking are available for public inspection on the Commission's Web site at *http://www.fec.gov/fosers/* and in the Commission's Public Records Office, 999 E Street NW., Washington, DC 20463, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. Interested persons may also obtain a copy of the petition by dialing the Commission's Faxline service at (202) 501–3413 and following its instructions, at any time of the day and week. Request document #274.

Consideration of the merits of the petition will be deferred until the close of the comment period. If the Commission decides that the petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

On behalf of the Commission.

Lee E. Goodman,

Chairman, Federal Election Commission.

[FR Doc. 2014–23443 Filed 10–1–14; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0750; Directorate Identifier 2014–NM–147–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 all Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposed AD was prompted by reports of dislodged engine fan cowl panels. This proposed AD would require installing additional attaching hardware on the left and right fan cowl access panels and the nacelle attaching structures. We are proposing this AD to prevent damage to the fuselage and flight control surfaces from dislodged engine fan cowl panels.

DATES: We must receive comments on this proposed AD by November 17, 2014.

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0750; 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: Andreas Rambalakos, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7345; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0750; Directorate Identifier 2014–NM–147–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 airworthiness authority for Canada, has issued Canadian Airworthiness Directive CF–2014–20, dated July 9, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The MCAI states:

> There have been a number of engine fan cowl panel dislodgement incidents reported on the Bombardier CL–600–2B19 aeroplane fleet. The dislodged panels may cause damage to the fuselage and flight control surfaces of the aeroplane. Also, the debris from a dislodged panel may result in runway contamination and has the potential of causing injury on the ground.
>
> Although the majority of the subject panel dislodgements were reported on the first or second flight after an engine maintenance task was performed that required removal and reinstallation of the subject panels, the frequency of the dislodgements indicates that the existing attachment design is prone to human (maintenance) error.
>
> Bombardier has attempted to mitigate this issue by issuing maintenance advisories emphasizing the proper installation of engine fan cowl panels. In order to further mitigate the potential safety hazard of the subject panel dislodgement, Bombardier has issued Service Bulletin (SB) 601R–71–034 to install additional fasteners for the attachment of the engine fan cowl panels to the nacelle's structure.
>
> This [Canadian] AD is issued to mandate compliance with Bombardier SB 601R–71–034.

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–2014–0750.

Relevant Service Information

Bombardier, Inc. has issued Service Bulletin 601R–71–034, Revision B, dated August 1, 2014. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

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 518 airplanes of U.S. registry.

We also estimate that it would take about 9 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $5,248 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $3,114,734, or $6,013 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2014–0750; Directorate Identifier 2014–NM–147–AD.

(a) Comments Due Date

We must receive comments by November 17, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100

& 440) airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by reports of dislodged engine fan cowl panels. We are issuing this AD to prevent damage to the fuselage and flight control surfaces from dislodged engine fan cowl panels.

(f) Compliance

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

(g) Fastener Installation

Within 6,000 flight hours after the effective date of this AD: Install attaching hardware on the left and right fan cowl access panels and the nacelle attaching structures, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–71–034, Revision B, dated August 1, 2014.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 601R–71–034, dated March 31, 2014; or Service Bulletin 601R–71–034, Revision A, dated April 28, 2014. This service information is not incorporated by reference in this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–20, dated July 9, 2014, 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–2014–0750.

(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 September 24, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23550 Filed 10–1–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0462; Directorate Identifier 2014–NE–06–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation Turboprop and Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Rolls-Royce Corporation (RRC) AE 2100 series turboprop engines and AE 3007A and 3007C series turbofan engines. This proposed AD was prompted by reports of pitting in the wheel bores and subsequent RRC analysis that concluded that lower life limits are needed for the affected turbine wheels. This proposed AD would reduce the approved life limits of the affected turbine wheels. This proposed AD would also require an eddy current inspection (ECI) of certain RRC engines with affected turbine wheels. We are proposing this AD to prevent uncontained failure of the turbine wheels, damage to the engine, and damage to the airplane.

DATES: We must receive comments on this proposed AD by December 1, 2014.

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 proposed AD, contact Rolls-Royce Corporation, 450 South Meridian Street, Mail Code NB–01–06, Indianapolis, IN 46225, phone: 317–230–1667; email: *CMSEindyOSD@rolls-royce.com;* Internet: *www.rolls-royce.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0462; 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: Kyri Zaroyiannis, Aerospace Engineer, Chicago Aircraft Certification Office, Small Airplane Directorate, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; phone: 847–294–7836; fax: 847–294–7834; email: *kyri.zaroyiannis@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–2014–0462; Directorate Identifier 2014–NE–06–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

Inspections during the manufacturing process revealed higher than normal pitting in the bore of certain turbine wheels due to a permanganate cleaning process. Analysis and subsequent testing by RRC of these affected turbine wheels indicated that these wheels, because of the potential for pitting in the wheel bores, could not be operated safely up to their published life limits. For RRC AE 2100 series turboprop engines, the affected turbine wheels are identified as 1st stage gas generator turbine wheels and as 4th stage turbine wheels. For the RRC AE 3007A and 3007C series turbofan engines, the affected turbine wheels are identified as high-pressure turbine (HPT) stage 1 and stage 2 wheels. Operation of the affected wheels above the new lower limits represents an unsafe condition.

We are also proposing an ECI for certain RRC AE 3007A engines with affected turbine wheels because our risk analysis shows that these engines are operated in a more stringent environment and therefore require periodic inspections to ensure these engines are operated safely.

This condition, if not corrected, could result in uncontained failure of the turbine wheels, damage to the engine, and damage to the airplane.

Relevant Service Information

We reviewed RRC Alert Service Bulletin (ASB) No. AE 2100D2–A–72–085, dated July 25, 2013; RRC ASB No. AE 2100D3–A–72–277, dated July 25, 2013; RRC ASB No. AE 2100P–A–72–019, dated July 25, 2013; RRC ASB No. AE 3007A–A–72–407, Revision 1, dated August 29, 2014; RRC ASB No. AE 3007A–A–72–408, Revision 1, dated August 29, 2014; and RRC ASB No. AE 3007C–A–72–316, dated December 6, 2013. RRC ASB No. AE 3007A–A–72–408 provides instructions on performing an ECI of affected HPT stage 2 wheels. The other RRC ASBs list the lower approved life limits of the affected turbine wheels.

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 an ECI of certain RRC engines with affected turbine wheels, and reduce the life limits of the affected turbine wheels.

Costs of Compliance

We estimate that this proposed AD would affect 664 engines installed on airplanes of U.S. registry. We also estimate that it would take about 1 hour to perform an ECI in the bore of the turbine wheel for affected engines. The average labor rate is $85 per work-hour. We estimate the pro-rated replacement cost would be $30,688 for a 1st stage gas generator turbine wheel; $63,693 for an HPT stage 1 wheel; $13,941 for an HPT stage 2 wheel; and $13,186 for a 4th stage turbine wheel. We also estimate that these parts would be replaced during an engine shop visit at no additional labor cost. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $11,317,969.

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 to the extent that it justifies making a regulatory distinction, and

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

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. Amend § 39.13 by adding the following new airworthiness directive (AD):

Rolls Royce Corporation (Formerly Allison Engine Company): Docket No. FAA–2014–0462; Directorate Identifier 2014–NE–06–AD.

(a) Comments Due Date

We must receive comments by December 1, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Rolls-Royce Corporation (RRC) AE 2100D2, 2100D2A, 2100D3, and 2100P turboprop engines and AE 3007A1, A1/1, A1/3, A1E, A1P, A2, A3, C, C1, and C2 turbofan engines:

(1) With an installed 1st stage gas generator turbine wheel, part number (P/N) 23079946, 23088906, or 23089692, all serial numbers (S/Ns) listed in Table 2 and Table 3 of RRC Alert Service Bulletin (ASB) No. AE 2100D2–A–72–085, dated July 25, 2013; and in Table 2 and Table 3 of RRC ASB No. AE 2100D3–A–72–277, dated July 25, 2013.

(2) With an installed high-pressure turbine (HPT) stage 1 or HPT stage 2 wheel, P/N 23079946, 23088906, 23088784, 23084520, 23084781, 23088817, or 23088818, all S/Ns listed in Table 1 through Table 7 of RRC ASB

No. AE 3007A–A–72–407, Revision 1, dated August 29, 2014, except those S/Ns excluded by Table 1, Table 2, Table 4, and Table 5 of RRC ASB No. AE 3007A–A–72–407, Revision 1, dated August 29, 2014.

(3) With an installed HPT stage 2 wheel, P/N 23084520 or 23088818, all S/Ns listed in Table 1 and Table 2 of RRC ASB No. AE 3007C–A–72–316, dated December 6, 2013, except those S/Ns excluded by Table 1 of RRC ASB No. AE 3007C–A–72–316, dated December 6, 2013.

(4) With an installed 4th stage turbine wheel, P/N 23083536, all S/Ns listed in Table 2 of RRC ASB No. AE 2100P–A–72–019, dated July 25, 2013.

(d) Unsafe Condition

This AD was prompted by reports of pitting in the wheel bores and subsequent RRC analysis that concluded that lower life limits are needed for the affected turbine wheels. We are issuing this AD to prevent uncontained failure of the turbine wheels, damage to the engine, and damage to the airplane.

(e) Compliance

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

(1) For all RRC AE 3007A1, A1/1, A1/3, A1E, A1P, and A3 series engines with an HPT stage 2 wheel P/N and S/N identified in RRC ASB No. AE 3007A–A–72–408, Revision 1, dated August 29, 2014, at each shop visit after the effective date of this AD, eddy current inspect the bore of the affected HPT stage 2 wheels. Use RRC ASB AE 3007A–A–72–408, Revision 1, August 29, 2014, to do the inspection. Do not return to service any wheel that fails the inspection required by this AD.

(2) Thirty days after the effective date of this AD, do not return to service any engine that has a turbine wheel with a P/N and an S/N listed in any of the following RR ASBs whose wheel life exceeds the new life limits identified in the RR ASBs:

RRC ASB No. AE 2100D2–A–72–085, dated July 25, 2013;

RRC ASB No. AE 2100D3–A–72–277, dated July 25, 2013;

RRC ASB No. AE 2100P–A–72–019, dated July 25, 2013;

RRC ASB No. AE 3007A–A–72–407, Revision 1, dated August 29, 2014; or

RRC ASB No. AE 3007C–A–72–316, dated December 6, 2013.

(f) Installation Prohibition

Thirty days after the effective date of this AD, do not install an affected wheel, as identified in paragraph (c) of this AD, into any RRC AE 3007C2 engine.

(g) Definition

For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance is not an engine shop visit.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Chicago Aircraft Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(i) Related Information

(1) For more information about this AD, contact Kyri Zaroyiannis, Aerospace Engineer, Chicago Aircraft Certification Office, Small Airplane Directorate, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; phone: 847–294–7836; fax: 847–294–7834; email: *kyri.zaroyiannis@faa.gov*.

(2) RRC ASB No. AE 2100D2–A–72–085, dated July 25, 2013; RRC ASB No. AE 2100D3–A–72–277, dated July 25, 2013; RRC ASB No. AE 2100P–A–72–019, dated July 25, 2013; RRC ASB No. AE 3007A–A–72–407, Revision 1, dated August 29, 2014; RRC ASB No. AE 3007A–A–72–408, Revision 1, dated August 29, 2014; and RRC ASB No. AE 3007C–A–72–316, dated December 6, 2013, which are not incorporated by reference in this AD, can be obtained from RRC using the contact information in paragraph (i)(3) of this AD.

(3) For service information identified in this AD, contact Rolls-Royce Corporation, 450 South Meridian Street, Mail Code NB–01–06, Indianapolis, IN 46225, phone: 317–230–1667; email: *CMSEindyOSD@rolls-royce.com;* Internet: *www.rolls-royce.com.*

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

Issued in Burlington, Massachusetts, on September 25, 2014.

Colleen M. D'Alessandro,

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

[FR Doc. 2014–23561 Filed 10–1–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0961; Directorate Identifier 2011–NE–22–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation Turboprop and Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2012–14–06, which applies to certain Rolls-Royce Corporation (RRC) 250–C20, –C20B, and –C20R/2 turboshaft engines. AD 2012–14–06 currently requires a one-time visual inspection and fluorescent-penetrant inspection (FPI) on certain 3rd-stage and 4th-stage turbine wheels for cracks in the turbine blades. Since we issued AD 2012–14–06, we determined that the one-time inspection required by AD 2012–14–06 should be changed to repetitive inspections and that we should add an inspection after any engine hot start. We also identified additional engine models subject to the unsafe condition. This proposed AD would replace the one-time visual inspection and FPI with repetitive visual inspections and FPIs, and would also require inspection and FPI after any engine hot start. This proposed AD would also add certain engine models to the applicability. We are proposing this AD to prevent failure of 3rd-stage and 4th-stage turbine wheel blades, which could cause engine failure and damage to the aircraft.

DATES: We must receive comments on this proposed AD by December 1, 2014.

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 proposed AD, contact Rolls-Royce Corporation, 450 South Meridian Street, Indianapolis, IN 46225–1103; phone: 888–255–4766 or 317–230–2720; email: *helicoptercustsupp@rolls-royce.com*; Internet: *www.rolls-royce.com*. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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–2011–0961; 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: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; phone: 847–294–8180; fax: 847–294–7834; email: *john.m.tallarovic@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0961; Directorate Identifier 2011–NE–22–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

On June 25, 2012, we issued AD 2012–14–06, Amendment 39–17120 (77 FR 40479, July 10, 2012), for certain RRC 250–C20, –C20B, and –C20R/2 turboshaft engines with 3rd-stage turbine wheel, part number (P/N) 23065818, and 4th-stage turbine wheel, P/N 23055944, installed. AD 2012–14–06 requires a one-time visual inspection and FPI on certain 3rd-stage and 4th-stage turbine wheels for cracks in the turbine blades. AD 2012–14–06 resulted from seven cases of released turbine blades and shrouds, which led to loss of power and engine in-flight shutdowns. We issued AD 2012–14–06 to prevent failure of 3rd-stage and 4th-stage turbine wheel blades, which could cause engine failure and damage to the aircraft.

Actions Since AD 2012–14–06 Was Issued

Since we issued AD 2012–14–06, Amendment 39–17120 (77 FR 40479, July 10, 2012), investigations of 3rd-stage and 4th-stage turbine wheel blade failures found that the one-time inspection required by that AD was not identifying all failures. We determined that repetitive inspections, triggered by hours since last inspection (HSLI) or any hot start event, are required to address the unsafe condition. We also identified additional engine models that are subject to the unsafe condition, and have added those engine models to the applicability of this AD.

Relevant Service Information

We reviewed RRC Alert Commercial Engine Bulletin (CEB) No. CEB–A–1407, Revision 3, dated May 19, 2014, and CEB No. CEB–A–72–4098, Revision 3, dated May 19, 2014 (combined into one document). The service information describes procedures for inspecting the 3rd-stage and 4th-stage turbine wheels.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain the initial inspection requirements of AD 2012–14–06, Amendment 39–17120 (77 FR 40479, July 10, 2012). This proposed AD would require repetitive visual inspections and FPIs of the 3rd-stage and 4th-stage turbine wheels based on HSLI. This proposed AD would also require visual inspection and FPI of the 3rd-stage and 4th-stage turbine wheels whenever an engine hot start occurs. We have added the requirement for opportunity inspections when the turbine is already disassembled because of the repetitive nature of this inspection. This proposed AD would also expand the applicability of this AD to include additional engine models.

Costs of Compliance

We estimate that this proposed AD affects 3,769 engines installed on aircraft of U.S. registry. We also estimate that it would take about 1 hour per engine to comply with the recurring inspection requirement of this AD. We estimate that about 19 engines will require an inspection following a hot start, and that it would take about 27 hours per engine to perform that inspection. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $363,970.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

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. Amend § 39.13 by removing airworthiness directive (AD) 2012–14–06, Amendment 39–17120 (77 FR 40479, July 10, 2012), and adding the following new AD:

Rolls-Royce Corporation (Type Certificate Previously Held by Allison Engine Company and Allison Gas Turbine Division of General Motors): Docket No. FAA–2011–0961; Directorate Identifier 2011–NE–22–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by December 1, 2014.

(b) Affected ADs

This AD supersedes AD 2012–14–06, Amendment 39–17120 (77 FR 40479, July 10, 2012).

(c) Applicability

This AD applies to Rolls-Royce Corporation (RRC) 250–B17, –B17B, –B17C, –B17D, –B17E, –B17F, –B17F/1, –B17F/2 turboprop engines; and RRC 250–C20, –C20B, –C20F, –C20J, –C20R, –C20R/1,–C20R/2, –C20R/4, –C20S and –C20W turboshaft engines with 3rd-stage turbine wheel, part number (P/N) 23065818, and 4th-stage turbine wheel, P/N 23055944, installed.

(d) Unsafe Condition

This AD was prompted by investigations that revealed that not all 3rd-stage and 4th-stage turbine wheel blade failures were identified by the one-time inspections required by AD 2012–14–06, Amendment 39–17120 (77 FR 40479, July 10, 2012). We determined that to address the unsafe condition, repetitive inspections are required, triggered by hours since last inspection (HSLI) or any hot start event. We are issuing this AD to prevent failure of 3rd-stage and 4th-stage turbine wheel blades, which could cause engine failure and damage to the aircraft.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done. After the effective date of this AD:

(1) Within 1,750 HSLI, remove the affected turbine wheels and perform a visual inspection and a fluorescent-penetrant inspection (FPI) on the removed turbine wheels for cracks at the trailing edge of the turbine blades near the fillet at the rim.

(2) Any time there is a hot start, immediately perform a visual inspection and an FPI on the affected turbine wheels for cracks at the trailing edge of the turbine blades, near the fillet at the rim.

(3) Any time the power turbine is disassembled, perform a visual inspection and an FPI on the affected turbine wheels for cracks at the trailing edge of the turbine blades, near the fillet at the rim.

(4) Thereafter, re-inspect every 1,750 HSLI.

(5) Do not return to service any turbine wheels that have cracks detected.

(f) Definition

For the purpose of this AD, an engine hot start is any time the turbine temperature exceeds 1,490 °F for 10 seconds or more, or exceeds 1,700 °F for any duration.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Chicago Aircraft Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

(1) For more information about this AD, contact John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; phone: 847–294–8180; fax: 847–294–7834; email: *john.m.tallarovic@faa.gov*.

(2) RRC Alert Commercial Engine Bulletin (CEB) No. CEB–A–1407, Revision 3, dated May 19, 2014, and CEB No. CEB–A–72–4098, Revision 3, dated May 19, 2014 (combined into one document), which are not incorporated by reference in this AD, can be obtained from RRC, using the contact information in paragraph (h)(3) of this AD.

(3) For service information identified in this AD, contact Rolls-Royce Corporation Customer Support, 450 South Meridian Street, Indianapolis, IN 46225–1103; phone: 888–255–4766 or 317–230–2720; email: *helicoptercustsupp@rolls-royce.com*; Internet: *www.rolls-royce.com*.

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on September 23, 2014.

Colleen M. D'Alessandro,

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

[FR Doc. 2014–23553 Filed 10–1–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0759; Directorate Identifier 2014–CE–028–AD]

RIN 2120–AA64

Airworthiness Directives; Alpha Aviation Concept Limited Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Alpha Aviation Concept Limited Model R2160 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as paint adherence defects inside the engine air intake box and cohesion defects inside the laminated ducting from the filter to the air intake box. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 17, 2014.

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

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

For service information identified in this proposed AD, contact Alpha Aviation, 59 Hautapu Road, RD 1, Cambridge 3493, New Zealand; telephone: +64 7 827 0528; fax: +64 7 929 2878; Internet: *www.alphaaviation.co.nz.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0759; 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 (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; phone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about

this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0759; Directorate Identifier 2014–CE–028–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://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 Civil Aviation Authority (CAA), which is the aviation authority for New Zealand, has issued AD DCA/R2000/25A, dated August 28, 2014 (referred to after this as ''the MCAI''), to correct an unsafe condition for Alpha Aviation Concept Limited Model R2160 airplanes and was based on mandatory continuing airworthiness information originated by an aviation authority of another country. The MCAI states:

> To prevent loss of engine power due to a possible paint adherence defect inside the engine air intake box, accomplish the following:
>
> Inspect the engine air intake box (including the deflection flap) and the engine air intake ducting (include the area downstream of the filter) per Alpha Aviation Service Bulletin No. AA–SB–71–007 dated August 2014 or later approved revisions.
>
> If any defects are found, replace affected parts per SB No. AA–SB–71–007 before further flight.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0759.

Relevant Service Information

Alpha Aviation Concept Limited has issued Alpha Aviation Service Bulletin AA–SB–71–007, Revision 0, dated August 2014. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the 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 will affect 10 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $850, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing $1,000, for a cost of $1,510 per product. We have no way of determining the number of products that may need these actions.

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. Amend § 39.13 by adding the following new AD:

Alpha Aviation Concept Limited: Docket No. FAA–2014–0759; Directorate Identifier 2014–CE–028–AD.

(a) Comments Due Date

We must receive comments by November 17, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Alpha Aviation Concept Limited Model R2160 airplanes, serial numbers 001 to 378, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 73: Engine Fuel & Control.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as paint adherence defects inside the engine air intake box and cohesion defects inside the laminated ducting from the filter to the air intake box. We are issuing this proposed AD to prevent paint defects from entering the engine which could cause loss of power.

(f) Actions and Compliance

Unless already done, do the actions in paragraphs (f)(1) through (f)(4) of this AD: (1) Within the next 100 hours time-in-service (TIS) after the effective date of this AD and repetitively thereafter every 100 hours TIS, inspect any painted engine air intake box (including the deflection flap) and the air

intake ducting (including the area downstream of the filter) for paint adherence defects such as peeling, blistering, or bubbling following Alpha Aviation Service Bulletin (SB) No. AA–SB–71–007, Revision 0, dated August 2014.

(2) If any defects are found during the inspection required in paragraph (f)(1) of this AD, before further flight, replace the affected parts with airworthy parts following Alpha Aviation Service Bulletin No. AA–SB–71–007, Revision 0, dated August 2014.

(3) As of the effective date of this AD, only install new unpainted steel assembly air intake boxes.

(4) The replacement of defective parts is not a terminating action to the repetitive inspection of painted engine intake components required in paragraph (f)(1) of this AD.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; phone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI Civil Aviation Authority (CAA) AD DCA/R2000/25A, dated August 28, 2014, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0759. For service information related to this AD, contact Alpha Aviation, 59 Hautapu Road, RD 1, Cambridge 3493, New Zealand; telephone: +64 7 827 0528; fax: +64 7 929 2878; Internet: *www.alphaaviation.co.nz.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on September 26, 2014.

Kelly A. Broadway,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23554 Filed 10–1–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0521; Directorate Identifier 2014–NE–11–AD]

RIN 2120–AA64

Airworthiness Directives; CFM International S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all CFM International (CFM) S.A. CFM56–7B series turbofan engines. This proposed AD was prompted by a dual engine thrust instability event that resulted in the overspeed and in-flight shutdown (IFSD) of one engine. This proposed AD would require modification of the engine by removing full authority digital engine control (FADEC) software, version 7BV4 or earlier, installed in the electronic engine controls (EECs) on CFM56–7B engines. We are proposing this AD to prevent a thrust instability event, which could lead to overspeed and IFSD of one or more engines, loss of thrust control, damage to the engine, and damage to the airplane.

DATES: We must receive comments on this proposed AD by December 1, 2014.

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 AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: 877–432–3272; fax: 877–432–3329; email: *geae.aoc@ge.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0521; 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: Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7146; fax: 781–238–7199; email: *barbara.caufield@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–2014–0521; Directorate Identifier 2014–NE–11–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 reports of dual engine thrust instability events on CFM56–7B turbofan engines that resulted in overspeed and IFSD of one engine. These resulted from water-borne fuel contamination of the fuel supply causing a lag in the response of the control valve in the fuel metering unit (FMU). CFM has improved its FADEC software to help prevent the lag in the response of the FMU control valve, thereby mitigating these thrust instability events. This condition, if not corrected, could lead to overspeed and IFSD of one or more engines, loss of thrust control, damage to the engine, and damage to the airplane.

Relevant Service Information

We reviewed CFM Service Bulletin (SB) No. CFM56–7B S/B 73–0203, dated June 9, 2014, and CFM SB No. CFM56–7B S/B 73–0204, dated June 9, 2014. The SBs describe procedures for the introduction of new FADEC software for the EECs.

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 modification of the engine by removing FADEC software, version 7BV4 or earlier, installed in the EECs on CFM56–7B engines.

Costs of Compliance

We estimate that this proposed AD would affect about 2,921 engines installed on airplanes of U.S. registry. We also estimate that it would take about 1 hour per product to comply with this proposed AD. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $248,285.

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 to the extent that it justifies making a regulatory distinction, and

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

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. Amend § 39.13 by adding the following new airworthiness directive (AD):

CFM International S.A.: Docket No. FAA–2014–0521; Directorate Identifier 2014–NE–11–AD.

(a) Comments Due Date

We must receive comments by December 1, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all CFM International (CFM) S.A. CFM56–7B series turbofan engines.

(d) Unsafe Condition

This AD was prompted by a dual engine thrust instability event that resulted in the overspeed and in-flight shutdown (IFSD) of one engine. We are issuing this AD to prevent a thrust instability event, which could lead to overspeed and IFSD of one or more engines, loss of thrust control, damage to the engine, and damage to the airplane.

(e) Compliance

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

(2) Within 6 months after the effective date of this AD, modify the engine by removing full authority digital engine control (FADEC) software, version 7BV4 or earlier, installed in the electronic engine controls.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(g) Related Information

(1) For more information about this AD, contact Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7751; fax: 781–238–7199; email: *barbara.caufield@faa.gov.*

(2) CFM Service Bulletin (SB) No. CFM56–7B S/B 73–0203, dated June 9, 2014, and CFM No. SB CFM56–7B S/B 73–0204, dated June 9, 2014, which are not incorporated by reference in this proposed AD, can be obtained from CFM using the contact information in paragraph (g)(3) of this proposed AD.

(3) For service information identified in this proposed AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: 877–432–3272; fax: 877–432–3329; email: *geae.aoc@ge.com.*

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

Issued in Burlington, Massachusetts, on September 25, 2014.

Ann C. Mollica,

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

[FR Doc. 2014–23563 Filed 10–1–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0656; Directorate Identifier 2013–NM–224–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; rescission.

SUMMARY: We propose to rescind Airworthiness Directive (AD) 2010–08–08, which applies to certain Airbus Model A330–243, –341, –342, and –343 airplanes. AD 2010–08–08 requires deactivating the water scavenge

automatic operation and revising the Limitations section of the airplane flight manual (AFM). We also propose to rescind AD 2011–06–04, which applies to certain Model A330–243F airplanes. AD 2011–06–04 requires revising the Limitations section of the AFM. We issued ADs 2010–08–08 and 2011–06–04 to prevent fuel flow restriction, caused by ice, resulting in a possible engine surge or stall condition, and the engine being unable to provide the commanded thrust. Since we issued ADs 2010–08–08 and 2011–06–04, we have determined that the water scavenge system (WSS) operation does not induce any risk of fuel feed system (including the engine) blockage by ice on the pipework or pump inlets. We have also determined that the risk of fuel flow restriction by ice at the fuel oil heat exchanger (FOHE) interface on airplanes equipped with Trent 700 engines is now addressed by a re-designed FOHE, which incorporates enhanced anti-icing and de-icing performance.

DATES: We must receive comments on this proposed AD by November 17, 2014.

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 the Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0656; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0656; Directorate Identifier 2013–NM–224–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

On April 1, 2010, we issued AD 2010–08–08, Amendment 39–16263 (75 FR 19196, April 14, 2010), for Airbus Model A330–243, –341, –342, and –343 airplanes equipped with Rolls-Royce Trent 700 engines, on which Airbus Modification 56966MP16199 has been embodied in production or Airbus Service Bulletin A330–28–3105 has been embodied in service. AD 2010–08–08 requires deactivating the water scavenge automatic operation and revising the Limitations section of the AFM. AD 2010–08–08 resulted from reports of ice being shed, causing a temporary blockage in the engine fuel system. We issued AD 2010–08–08 to prevent fuel flow restriction caused by ice, resulting in a possible engine surge or stall condition, and the engine being unable to provide the commanded thrust.

On February 28, 2011, we issued AD 2011–06–04, Amendment 39–16628 (76 FR 13075, March 10, 2011), for Airbus Model A330–243F airplanes, on which Airbus Modification 56966H16199 has been embodied in production or Airbus Service Bulletin A330–28–3105 has been embodied in service. AD 2011–06–04 requires revising the Limitations section of the AFM. AD 2011–06–04 resulted from reports of ice being shed, causing a temporary blockage in the engine fuel system. We issued AD 2011–06–04 to prevent fuel flow restriction caused by ice, resulting in a possible engine surge or stall condition, and the engine being unable to provide the commanded thrust.

Actions Since ADs 2010–08–08, Amendment 39–16263 (75 FR 19196, April 14, 2010), and 2011–06–04, Amendment 39–16628 (76 FR 13075, March 10, 2011), Were Issued

Since we issued ADs 2010–08–08, Amendment 39–16263 (75 FR 19196, April 14, 2010), and 2011–06–04, Amendment 39–16628 (76 FR 13075, March 10, 2011), we have determined that the WSS operation does not induce any risk of fuel feed system (including the engine) blockage by ice on the pipework or pump inlets.

We have also determined that the risk of fuel flow restriction by ice at the FOHE interface on airplanes equipped with Trent 700 engines is now addressed by a re-designed FOHE (Airbus Modification 200218), which incorporates enhanced anti-icing and de-icing performance. The re-designed FOHE was required to be installed on all Trent 700 engines by FAA AD 2010–07–01, Amendment 39–16244 (75 FR 15326, March 29, 2010).

EASA has issued Airworthiness Directive 2010–0132–CN, dated October 14, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to cancel EASA AD 2010–0132R1, dated June 10, 2013, which superseded EASA AD 2010–0132, dated June 28, 2010. The requirements of FAA AD 2010–08–08, Amendment 39–16263 (75 FR 19196, April 14, 2010), and AD 2011–06–04, Amendment 39–16628 (76 FR 13075, March 10, 2011), correspond to EASA AD 2010–0132. The MCAI states:

> During an in-service event, the flight crew of a Trent 700 powered A330 aeroplane reported a temporary Engine Pressure Ratio (EPR) shortfall on engine 2 during the take-off phase of the flight. The ENG STALL warning was set. The flight crew followed the standard procedures which included reducing throttle to idle. The engine recovered and provided the demanded thrust level for the remainder of the flight.
>
> Data analysis confirmed a temporary fuel flow restriction and subsequent recovery, and indicated that also engine 1 experienced a

temporary fuel flow restriction shortly after the initial event on engine 2, again followed by a full recovery. The engine 1 EPR shortfall was insufficient to trigger any associated warning and was only noted through analysis of the flight data. No flight crew action was necessary to recover normal performance on this engine. The remainder of the flight was uneventful.

Based on industry-wide experience, the investigation of the event focused on the possibility for ice to temporarily restrict the fuel flow. While no direct fuel system fault was identified, the operation of the water scavenge system (WSS) at Rib 3 was considered to have been a contributory factor.

Prompted by these findings, EASA issued Emergency AD 2010–0042–E [which corresponds to FAA AD 2010–08–08, Amendment 39–16263 (75 FR 19196, April 14, 2010] to require deactivation of the automatic Standby Fuel Pump Scavenge System and to prohibit dispatch of an aeroplane with one main fuel pump inoperative.

Subsequently, EASA issued AD 2010–0132 which superseded EASA AD 2010–0042–E, retaining its requirements, to expand the applicability to the newly certified model A330–243F [which corresponds to FAA AD 2011–06–04, Amendment 39–16628 (76 FR 13075, March 10, 2011, for the A330–243F requirements]. EASA AD 2010–0132 was later revised to remove the dispatch restriction with one main fuel pump inoperative.

Since EASA AD 2010–0132R1 was issued, extensive fuel system icing risk investigations testing was conducted by Airbus and Rolls-Royce, the results of which confirmed that the Rib 3 WSS operation does not induce any risk of fuel feed system (including the engine) blockage by ice accreted on the pipework and/or pump inlets. In addition, it was demonstrated that the risk of fuel flow restriction by ice at the Fuel Oil Heat Exchanger (FOHE) interface on aeroplanes equipped with Trent 700 engines is now adequately addressed by introduction of a re-designed FOHE, more tolerant to the release of ice (modification 200218). The modified FOHE (incorporating enhanced anti-icing and de-icing performance) is required to be installed on all Trent 700 engines through EASA AD 2009–0257 [which corresponds to FAA AD 2010–07–01, Amendment 39–16244 (75 FR 15326, March 29, 2010)].

Previously, the operation of the WSS at Rib 3 was no longer considered as a main contributory factor on ice build-up and subsequent release of ice into the fuel system. Based on the latest information, the deactivation of the automatic Standby Fuel Pump Scavenge System is no longer required.

For the reasons described above, this Notice cancels EASA AD 2010–0132R1.

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–2014–0656.

FAA's Conclusions

Upon further consideration, we have determined that ADs 2010–08–08, Amendment 39–16263 (75 FR 19196, April 14, 2010), and 2011–06–04, Amendment 39–16628 (76 FR 13075, March 10, 2011), must be rescinded. Rescission of ADs 2010–08–08 and 2011–06–04 would not preclude the FAA from issuing another related action nor commit the FAA to any course of action in the future.

Related Costs of Compliance

AD 2010–08–08, Amendment 39–16263 (75 FR 19196, April 14, 2010), affects about 13 airplanes of U.S. registry. The estimated cost of the actions required by AD 2010–08–08 for U.S. operators is $1,105, or $85 per product. Rescinding AD 2010–08–08 would eliminate those costs.

AD 2011–06–04, Amendment 39–16628 (76 FR 13075, March 10, 2011), affects no airplanes of U.S. registry. For U.S. operators, there are no costs associated with the actions required by AD 2011–06–04.

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 proposed regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directives (AD) 2010–08–08, Amendment 39–16263 (75 FR 19196, April 14, 2010); and 2011–06–04, Amendment 39–16628 (76 FR 13075, March 10, 2011); and adding the following new AD:

Airbus: Docket No. FAA–2014–0656; Directorate Identifier 2013–NM–224–AD.

(a) Comments Due Date

We must receive comments by November 17, 2014.

(b) Affected ADs

This action removes ADs 2010–08–08, Amendment 39–16263 (75 FR 19196, April 14, 2010); and 2011–06–04, Amendment 39–16628 (76 FR 13075, March 10, 2011).

(c) Applicability

This AD applies to the airplanes specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Airbus Model A330–243, –341, –342, and –343 airplanes, certificated in any category, all manufacturer serial numbers equipped with Rolls-Royce Trent 700 engines, on which Airbus Modification 56966MP16199 has been embodied in production or Airbus Service Bulletin A330–28–3105 has been embodied in service.

(2) Airbus Model A330–243F airplanes, certificated in any category, all manufacturer serial numbers on which Airbus Modification 56966H16199 has been embodied in production or Airbus Service Bulletin A330–28–3105 has been embodied in service.

Issued in Renton, Washington, on September 24, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23472 Filed 10–1–14; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0460; FRL–9915–36–Region 9]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern definitions that are necessary for the creation, modification and understanding of rules that address air pollution. Among other changes, the revised definitions help clarify federal New Source Review (NSR) requirements, update the districts' exempt volatile organic compounds list to correspond with EPA's, and improve formatting consistency. We are proposing to approve local rules which include these definitions under the Clean Air Act (CAA or the Act).

DATES: Any comments on this proposal must arrive by November 3, 2014.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0460, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, (415) 972–3024, *lazarus.arnold@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: ICAPCD Rule 101 and SJVUAPCD Rule 1020. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive 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 do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 25, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2014–23401 Filed 10–1–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA–R06–RCRA–2012–0793; FRL–9916–01–Region 6]

Arkansas: Final Authorization of State-Initiated Changes and Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: During a review of Arkansas' regulations, the Environmental Protection Agency (EPA) identified a variety of State-initiated changes to Arkansas' hazardous waste program under the Resource Conservation and Recovery Act, as amended (RCRA), for which the State had not previously sought authorization. The EPA proposes to authorize the State for the program changes. In addition, the EPA proposes to codify in the regulations entitled ''Approved State Hazardous Waste Management Programs'', Arkansas' authorized hazardous waste program. The EPA will incorporate by reference into the Code of Federal Regulations (CFR) those provisions of the State regulations that are authorized and that the EPA will enforce under RCRA.

DATES: Send written comments by November 3, 2014.

ADDRESSES: Send written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Phone number: (214) 665–8533 or (214) 665–8178. You may also submit comments electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the direct final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, (214) 665–8533.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is authorizing

the changes to the Arkansas program, and codifying and incorporating by reference the State's hazardous waste program as a direct final rule. The EPA did not make a proposal prior to the direct final rule because we believe these actions are not controversial and do not expect comments that oppose them. We have explained the reasons for this authorization and incorporation by reference in the preamble to the direct final rule. Unless we get written comments which oppose this authorization and incorporation by reference during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose these actions, we will withdraw the direct final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: August 18, 2014.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2014–23363 Filed 10–1–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130822745–4627–01]

RIN 0648–BD64

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Information Collection

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

ACTION: Proposed rule; reopening of comment period.

SUMMARY: NMFS reopens the comment period on the proposed rule to implement an information collection program for the Atlantic surfclam and ocean quahog fishery that published on August 7, 2014. The original comment period closed on September 8, 2014. The Mid-Atlantic Fishery Management Council requested the comment period be reopened to allow for additional public comment through October 17, 2014, to be submitted after this proposed action is discussed at the upcoming Council meeting.

DATES: The comment period for the proposed rule published August 7, 2014 (79 FR 46233), is reopened. Public comment must be received by October 17, 2014.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2014–0088, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0088,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Surfclam/Ocean Quahog Information Collection.''

Instructions: All comments received are part of the public record and will generally be posted to *www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Greater Atlantic Regional Fisheries Office and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978–281–9341.

SUPPLEMENTARY INFORMATION:

Background

Section 402(a)(1) for the Magnuson-Stevens Fishery Conservation and Management Act authorizes the Secretary of Commerce to implement an information collection program if a fishery management council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan. The Mid-Atlantic Fishery Management Council requested that NMFS implement an information collection program in the Atlantic surfclam and ocean quahog individual transferable quota (ITQ) fisheries. The specific components of the requested information collection are detailed in a white paper titled, ''Data Collection Recommendations for the Surfclam and Ocean Quahog Fisheries,'' that was prepared by the Surfclam and Ocean Quahog Data Collection Fishery Management Action Team at the direction of the Council. The purpose of this information collection is to better identify the specific individuals who hold or control ITQ allocation in these fisheries. The Council will use the information collected to inform the development of a future management action intended to establish an excessive share cap as part of the Council's Atlantic Surfclam and Ocean Quahog Fishery Management Plan.

On August 7, 2014, NMFS published in the **Federal Register** a proposed rule to implement the Council's requested information collection program with a 30-day comment period that closed on September 8, 2014 (79 FR 46233). NMFS received a request from the Council to extend the comment period until after the Council meeting on October 7–9, 2014, to allow the Council to hold a public discussion of the proposed measures. Therefore, to allow for additional public comment to be submitted after this proposed action is discussed at the Council meeting, NMFS is reopening the comment period on the proposed rule through October 17, 2014. Comments submitted during the prior comment period have been incorporated into the public record, and will be fully considered during preparation of our final determination.

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

Dated: September 26, 2014.

Samuel D. Rauch III,

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

[FR Doc. 2014–23432 Filed 10–1–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 79, No. 191

Thursday, October 2, 2014

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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee for a Meeting To Discuss Potential Project Topics

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice 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 Tennessee Advisory Committee (Committee) will hold a meeting on Monday, October 27, 2014, for the purpose of receiving updates from each sub-committee and to discuss the 4 civil rights topics recently dispersed from the USCCR briefing.

Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 1–877–446–3914, conference ID: 669140. Any interested member of the public may call this number and listen to the meeting. 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 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 by November 27, 2014. Written comments may be mailed to the Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 16T126, Atlanta, GA 30303. They may also be faxed to the Commission at (404) 562–7005, or emailed to Regional Director, Jeffrey Hinton at *jhinton@usccr.gov.* Persons who desire additional information may contact the Southern Regional Office at (404) 562–7000.

Records generated from this meeting may be inspected and reproduced at the Southern 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, Tennessee Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Southern Regional Office at the above email or street address.

DATES: The meeting will be held on Monday, October 27, 2014, at 12:00 p.m. CT.

ADDRESSES: The meeting will be by teleconference. Toll-free call-in number: 1–877–446–3914, conference ID: 669140.

Dated: September 29, 2014.

David Mussatt,

Chief, Regional Programs Unit, U.S. Commission on Civil Rights.

[FR Doc. 2014–23464 Filed 10–1–14; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–42–2014]

Foreign-Trade Zone 183—Austin, Texas; Authorization of Production Activity; Flextronics America, LLC; (Automated Data Processing Machines); Austin, Texas

On May 29, 2014, Flextronics America, LLC submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within Subzone 183C, in Austin, Texas.

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 (79 FR 32532–32533, 6–5–2014). 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 Board's regulations, including Section 400.14.

Dated: September 29, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–23552 Filed 10–1–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–69–2014]

Foreign-Trade Zone (FTZ) 155—Calhoun/Victoria Counties, Texas; Notification of Proposed Production Activity; Tenaris Bay City, Inc. (Seamless Steel Tubes and Pipes); Bay City, Texas

The Calhoun-Victoria Foreign-Trade Zone, Inc., grantee of FTZ 155, submitted a notification of proposed production activity to the FTZ Board on behalf of Tenaris Bay City, Inc. (Tenaris), located in Bay City, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 25, 2014.

The applicant indicates that a separate application for subzone designation at the Tenaris facility will be submitted. Any such application would be processed under Section 400.38 of the Board's regulations. The Tenaris facility is used for the production of seamless steel tubes and pipes used in oil and gas production as well as other industrial applications (oil country tubular good casings and line pipes). Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Tenaris from customs duty payments on the foreign status components used in export production. On its domestic sales, Tenaris would be able to choose the duty rates during customs entry procedures that apply to: Line pipes of iron or non-alloy steel; line pipes of other alloy steel; threaded or coupled casings of iron or non-alloy steel; non-threaded or non-coupled

casings of iron or non-alloy steel; threaded or coupled casings of other alloy steel; non-threaded or non-coupled casings of other alloy steel; tubing of iron or non-alloy steel; tubing and casing of other alloy steel; and, tubing and casing of other alloy steel used in heat exchangers or refining furnaces (duty-free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Billets (round bars-alloy/steel); non-alloy round steel bars; couplings; plastic protectors and caps; thread compounds; corrosion inhibitors; solvents; thinners; non-threaded and non-coupled casings of iron or non-alloy steel; non-threaded and non-coupled casings of other alloy steel; tubing of iron or non-alloy steel; and, tubing of other alloy steel (duty rate ranges from duty-free to 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 12, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: September 28, 2104.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–23547 Filed 10–1–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: Demetrio Cortez-Salgado, 317 South G Street, #102, Madera, CA 93637

On September 11, 2013, in the U.S. District Court, Eastern District of California, Demetrio Cortez-Salgado (''Salgado''), was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) (''AECA''). Specifically, Cortez-Salgado knowingly and willfully exported and caused to be exported and attempted to export and attempted to cause to be exported from the United States to Mexico caliber rifles, defense articles which were on the United States Munitions List, without having first obtained from the Department of State a license for such export or written authorization for such export. Cortez-Salgado was sentenced to 24 months imprisonment, 36 months of supervised release and a $100 assessment. Cortez-Salgado was released from prison on November 15, 2013. Cortez-Salgado is also listed on the U.S. Department of State Debarred List.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Cortez-Salgado's conviction for violating the AECA, and have provided notice and an opportunity for Cortez-Salgado to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Cortez-Salgado.

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

Accordingly, it is hereby

ORDERED

I. Until September 11, 2023, Demetrio Cortez-Salgado, with a last known address at: 317 South G Street, #102, Madera, CA 93637, and when acting for or on behalf of Cortez-Salgado, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

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

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

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

II. No person may, directly or indirectly, do any of the following:

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

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

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2014). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2014 (79 FR 46959 (August 11, 2014)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

has been exported from the United States;

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

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

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Cortez-Salgado by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order is effective immediately and shall remain in effect until September 11, 2023.

V. In accordance with part 756 of the Regulations, Cortez-Salgado may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

VI. A copy of this Order shall be delivered to the Cortez-Salgado. This Order shall be published in the **Federal Register**.

Issued this day of September 25, 2014.

Karen H. Nies-Vogel,

Acting Director, Office of Exporter Services.

[FR Doc. 2014–23459 Filed 10–1–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–818]

Low Enriched Uranium From France: Preliminary Results of Changed Circumstances Review

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

SUMMARY: Pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c)(3), the Department of Commerce (Department) is conducting a changed circumstances review (CCR) of the antidumping duty (AD) order on low-enriched uranium (LEU) from France with respect to Global Nuclear Fuel—Americas, LLC (GNF–A). The Department preliminarily determines that changed circumstances exist which have affected the ability of GNF–A to manage its inventory and re-exports of LEU in compliance with the AD order. Furthermore, we preliminarily determine that these changed circumstances warrant: (1) authorizing GNF–A to make certain entries of LEU from France under the provision in the scope that excludes LEU from the AD order when it enters solely for purposes of fabrication into fuel rods and re-exportation to a third country customer; and (2) determining that certain entries of LEU by GNF–A have satisfied the conditions for exclusion from the AD order. We invite interested parties to comment on these preliminary results.

DATES: *Effective Date:* October 2, 2014.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

On February 13, 2002, the Department published an AD order on LEU from France.[1] The scope of the order contains a provision to exclude from the scope LEU owned by a:

> foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.[2]

On December 23, 2013, GNF–A submitted a request that the Department initiate a CCR to determine that changed circumstances (the Tohoku earthquake and other external events in Japan) exist which have affected GNF–A's ability to manage its inventory and comply with the 18-month re-export provision of the scope. GNF–A further requested that this review be conducted on an expedited basis, combining the initiation and preliminary results in a single notice. On February 7, 2014, the Department published the initiation of the CCR on a non-expedited basis.[3]

Scope of the Order

The product covered by the order is all low-enriched uranium. Low-enriched uranium is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including low-enriched uranium produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of the order. Specifically, the order does not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly-enriched uranium. In addition, fabricated low-enriched uranium is not covered by the scope of the order. For purposes of the order, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of the order.

Also excluded from the order is low-enriched uranium owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported low-enriched uranium (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the low-enriched uranium for consumption by the end-user in a

[1] *See Notice of Amended Final Determination and Notice of Antidumping Duty Order: Low Enriched Uranium From France,* 67 FR 6680 (February 13, 2002).

[2] *Id.*

[3] *See Low Enriched Uranium From France: Initiation of Changed Circumstances Review,* 79 FR 7462 (February 7, 2014).

nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this proceeding is dispositive.

Preliminary Results of Changed Circumstances Review

Based on the Department's analysis of the information provided by GNF–A with its request for CCR, and in its August 1 and 15, 2014 responses to the Department's July 11, 2014 questionnaire and July 15, 2014 questionnaire revision, in accordance with 19 CFR 351.216, we preliminarily determine that changed circumstances (earthquakes and other external events) exist which have affected GNF–A's ability to manage it inventory and comply with the 18-month re-export requirement. As such, it is appropriate for the Department to allow GNF–A to make certain future entries of LEU under the provision for exclusion from the scope of the order and to find that certain past entries by GNF–A of LEU from France satisfy the conditions for exclusion from the order. Because the Department's full analysis of the details of GNF–A's request for CCR and the information provided by GNF–A in its questionnaire response requires a discussion of business proprietary information, the full analysis can be found in the proprietary Memorandum for Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Preliminary Results of Changed Circumstances Review: Analysis of GNF–A Business Proprietary Information,'' available on Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS) (*http://iaacess.trade.gov*) to parties who have been granted access to business proprietary information under Administrative Protective Order. A public version of this memorandum is also available on IA ACCESS, and it is available to all parties in the Central Records Unit of the main Commerce Building, room 7046. In addition, a complete public version of this memorandum is accessible on the internet at *http://enforcement.trade.gov/frn/index.html*. The Department will issue revised certifications and instructions to U.S. Customs and Border Protection regarding GNF–A's compliance with the 18-month re-export requirement.

Notification Regarding Revised Entry Requirements

The Department recently revised the entry requirements for LEU from France. The Department determined that it is appropriate to suspend liquidation for shipments of LEU from France that may be conditionally excluded from the scope of the AD order. Such entries will be suspended and cash deposits of estimated AD duties will be required, at a rate of zero percent *ad valorem*.[4]

Public Comment

Interested parties are invited to comment on these preliminary results in accordance with 19 CFR 351.309(c)(1)(ii). Case briefs from interested parties may be submitted not later than seven days after the date of the announcement of these preliminary results. Rebuttal briefs, limited to the issues raised in the case briefs, may be filed no later than five days after the submission of case briefs. Any interested party may request a hearing within seven days of the announcement of these preliminary results. Any hearing, if requested, will be held no later than 15 days after the date of publication of this notice, or the first business day thereafter. Persons interested in attending the hearing, if one is requested, should contact the Department for the location, date and time of the hearing.

All written comments shall be submitted in accordance with 19 CFR 351.303. Parties are reminded that as of August 5, 2011, with certain, limited exceptions, all submissions for all proceedings must be filed electronically using IA ACCESS.[5] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time (ET) on the day of the deadline.

The Department intends to issue the final results of this CCR no later than October 27, 2014. This date may not be extended. The final results will include the Department's analysis of issues raised in any written comments.

We are issuing and publishing these preliminary results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act and 19 CFR 351.216.

Dated: September 25, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–23556 Filed 10–1–14; 8:45 am]

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[4] *See* ''Low-Enriched Uranium from France: Final Results of Antidumping Duty Administrative Review; 2012–2013,'' dated September 22, 2014, unpublished as of the date of these preliminary results. This document is accessible on the internet at *http://enforcement.trade.gov/frn/index.html*.

[5] For additional information on IA ACCESS, visit *https://iaaccess.trade.gov/help.aspx*.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review; 2013–2014

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

DATES: *Effective Date:* October 2, 2014.

SUMMARY: The Department of Commerce (''the Department'') received a timely request for a new shipper review (''NSR'') of the antidumping duty (''AD'') order on certain frozen fish fillets (''fish fillets'') from the Socialist Republic of Vietnam (''Vietnam''). The Department determines that the request meets the statutory and regulatory requirements for initiation. The period of review (''POR'') for this NSR is August 1, 2013, through July 31, 2014.

FOR FURTHER INFORMATION CONTACT: Alexander Montoro, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–0238.

SUPPLEMENTARY INFORMATION:

Background

The AD order on fish fillets from Vietnam was published in the **Federal Register** on August 12, 2003.[1] On September 2, 2014, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(b), the Department received an NSR request from BASA Joint Stock Company (''BASACO'').[2] BASACO certified that it is a producer and exporter of the subject merchandise and that it exported, or has sold for export,

[1] *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 47909 (August 12, 2003).

[2] *See* Letter from BASACO, ''Request for New Shipper Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam—8/1/13–7/31/14,'' dated September 2, 2014.

subject merchandise to the United States.[3]

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), BASACO certified that it did not export subject merchandise to the United States during the period of investigation (''POI'').[4] In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), BASACO certified that, since the initiation of the investigation, it has never been affiliated with any Vietnamese exporter or producer who exported subject merchandise to the United States during the POI, including those respondents not individually examined during the investigation.[5] As required by 19 CFR 351.214(b)(2)(iii)(B), BASACO also certified that its export activities were not controlled by the central government of Vietnam.[6]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), BASACO submitted documentation establishing the following: (1) The date on which it first shipped subject merchandise for export to the United States; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[7]

Finally, the Department conducted a U.S. Customs and Border Protection (''CBP'') database query and confirmed the price, quantity, date of sale, and date of entry of the sale at issue.[8]

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), and based on the evidence provided by BASACO, we find that the request submitted by BASACO meets the requirements for initiation of the NSR for shipments of fish fillets from Vietnam produced and exported by BASACO.[9] The POR is August 1, 2013, through July 31, 2014.[10] Absent a determination that the case is extraordinarily complicated, the Department intends to issue the preliminary results of this NSR within 180 days from the date of initiation and the final results within 270 days from the date of initiation.[11]

It is the Department's usual practice, in cases involving non-market economy countries, to require that a company seeking to establish eligibility for an AD rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to BASACO that will include a section requesting information with regard to BASACO's export activities for separate rate purposes. The review of BASACO will proceed if the response provides sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of fish fillets.

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the requesting company in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because BASACO certified that it both produced and exported the subject merchandise, the sale of which is the basis for the NSR request, we will instruct CBP to permit the use of a bond only for subject merchandise which BASACO both produced and exported.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order, in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act, 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: September 24, 2014.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–23562 Filed 10–1–14; 8:45 am]

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[3] *Id.* at 2 and at Exhibit 1.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.* at Exhibit 2–4.

[8] The Department will place the results of the completed CBP database query along with BASACO's entry documents on the record shortly after the publication of this notice.

[9] *See* Memorandum to the File from Alexander Montoro, International Trade Compliance Analyst, ''Initiation of Antidumping Duty New Shipper Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (A–552–801)'' dated concurrently with and hereby adopted by this notice.

[10] *See* 19 CFR 351.214(g)(1)(i)(B).

[11] *See* section 751(a)(2)(B)(iv) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–977]

High Pressure Steel Cylinders From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2013–2014

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

SUMMARY: The Department of Commerce (''the Department'') is rescinding the administrative review of the antidumping duty order on high pressure steel cylinders from the People's Republic of China (''PRC'') for the period June 1, 2013, through May 31, 2014.

DATES: *Effective Date:* October 2, 2014.

FOR FURTHER INFORMATION CONTACT: Alexander Montoro, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0238.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 2014, based on a timely request for review by Norris Cylinder Company (''Norris'') and Beijing Tianhai Industry Co., Ltd. (''BTIC''),[1] the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on high pressure steel cylinders from the PRC covering the period June 1, 2013, through May 31, 2014.[2] The review covers only BTIC.[3] On September 9, 2014, Norris and BTIC withdrew their requests for an administrative review.[4] No other party requested a review of

[1] *See* Request for Second Administrative Review of the Antidumping Duty Order on High Pressure Steel Cylinders from the People's Republic of China filed by BTIC on June 30, 2014, and *see* High Pressure Steel Cylinders from the People's Republic of China Revised Request for Administrative Review and Entry of Appearance filed by Norris on June 30, 2014.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 79 FR 44390 (July 31, 2014) (''*Initiation Notice*'').

[3] *Id.,* 79 FR 44392.

[4] *See* Withdrawal of Request for an Administrative Review of Antidumping Duty Order on High Pressure Steel Cylinders from the People's Republic of China filed by Norris on September 9, 2014, and *see* Withdrawal of Review Request in the Administrative Review of Antidumping Duty Order on High Pressure Steel Cylinders from the People's Republic of China filed by BTIC on September 9, 2014.

this company or any other exporter of subject merchandise.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. In this case, Norris and BTIC timely withdrew their requests by the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. As a result, pursuant to 19 CFR 351.213(d)(1), we are rescinding the administrative review of high pressure steel cylinders from the PRC for the period June 1, 2013, through May 31, 2014, in its entirety.

Assessment

The Department will instruct U.S. Customs and Border Protect (''CBP'') to assess antidumping duties on all appropriate entries. Because the Department is rescinding this administrative review in its entirety, the entries subject to this administrative review shall be assessed antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**, if appropriate.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 24, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–23558 Filed 10–1–14; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2014–0053]

Grant of Interim Extension of the Term of U.S. Patent No. 5,454,779; ResQPump®/ResQPOD® ITD

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of Interim Patent Term Extension.

SUMMARY: The United States Patent and Trademark Office has issued a third order granting interim extension under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 5,454,779.

FOR FURTHER INFORMATION CONTACT: Mary C. Till by telephone at (571) 272–7755; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Hatch-Waxman PTE, P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (571) 273–7755; or by email to *Mary.Till@uspto.gov.*

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to one year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On August 29, 2014, the Regents of the University of California timely filed an application under 35 U.S.C. 156(d)(5) for a third interim extension of the term of U.S. Patent No. 5,454,779. The patent claims the medical device, ResQPump® in connection with the ResQPOD® ITD. The application indicates that a Premarket Approval Application, PMA No. P110024, for the medical device has been filed, and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Because it is apparent that the regulatory review period will continue beyond the extended expiration date of the patent, October 3, 2014, interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 5,454,779 is granted for a period of one year from the extended expiration date of the patent.

Dated: September 24, 2014.

Andrew Hirshfeld,

Deputy Commissioner for Patent Examination Policy United States Patent and Trademark Office.

[FR Doc. 2014–23467 Filed 10–1–14; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries From Regional and Third-Country Fabric

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the New 12-Month Cap on Duty- and Quota-Free Benefits.

DATES: Effective October 1, 2014.

FOR FURTHER INFORMATION CONTACT: Don Niewiaroski, Jr., International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2496.

SUPPLEMENTARY INFORMATION:

Authority: Title I, Section 112(b)(3) of the Trade and Development Act of 2000 (TDA 2000), Pub. L. 106–200, as amended by Division B, Title XXI, section 3108 of the Trade Act of 2002, Pub. L. 107–210; Section 7(b)(2) of the AGOA Acceleration Act of 2004, Pub. L. 108-274; Division D, Title VI, section 6002 of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), Pub. L. 109–432, and section 1, Pub. L. 112–163, August 10, 2012; Presidential Proclamation 7350 of October 2, 2000 (65 FR 59321); and Presidential Proclamation 7626 of November 13, 2002 (67 FR 69459).

Title I of TDA 2000 provides for duty- and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries.

Section 112(b)(3) of TDA 2000 provides duty- and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary countries from yarn originating in the U.S. or one or more beneficiary countries. This preferential treatment is also available for apparel articles assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles, subject to quantitative limitation. Public Law 112–163 extended this special rule for lesser-developed countries through September 30, 2015.

The AGOA Acceleration Act of 2004 provides that the quantitative limitation for the twelve-month period beginning October 1, 2014 will be an amount not to exceed 7 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. *See* Section 112(b)(3)(A)(ii)(I) of TDA 2000, as amended by Section 7(b)(2)(B) of the AGOA Acceleration Act of 2004. Of this overall amount, apparel imported under the special rule for lesser-developed countries is limited to an amount not to exceed 3.5 percent of all apparel articles imported into the United States in the preceding 12-month period. *See* Section 112(b)(3)(B)(ii)(II) of TDA 2000, as amended by Section 6002(a) of TRHCA 2006. Presidential Proclamation 7350 of October 2, 2000 directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the **Federal Register**.

For the one-year period, beginning on October 1, 2014, and extending through September 30, 2015 the aggregate quantity of imports eligible for preferential treatment under these provisions is 1,833,741,923 square meters equivalent. Of this amount, 916,870,961 square meters equivalent is available to apparel articles imported under the special rule for lesser-developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2014–23493 Filed 10–1–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0100]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 3, 2014.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: OFPP Rate the Agency Initiative; OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 800.

Responses per Respondent: 1.

Annual Responses: 800.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 133.

Needs and Uses: The information collection requirement is necessary to obtain offerors' feedback on the pre-award phase of WHS/AD Requests for Proposals (RFPs) greater than $1M. Their answers will help WHS/AD assess performance and identify strengths and weaknesses. The survey is optional and anonymous. The results from the survey will not be published or made publicly available. The survey will be provided to all those firms submitting offers in response to specific Requests for Proposals greater than $1M.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: September 29, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–23462 Filed 10–1–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2014–OS–0061]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 3, 2014.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: National Security Education Program (NSEP) Service Agreement for Scholarship and Fellowship Awards; DD Form 2752; DD Form 2753; OMB Control Number 0704–0368.

Type of Request: Extension

Number of Respondents: 1650

Responses per Respondent: 1

Annual Responses: 1650

Average Burden per Response: 10 minutes

Annual Burden Hours: 275

Needs and Uses: The information collection requirement is necessary to record the original award amount and service requirement for each NSEP award recipient (DD Form 2752) and the progress of each NSEP award recipient in fulfilling his/her Congressionally-mandated service requirement signed at the time of award (DD Form 2753). Respondents are undergraduate and graduate students who agree to the terms of their award (DD Form 2752) and who agree upon receipt of award to submit the Service Agreement Report (DD Form 2753) annually until their service requirement is completed in full. The information is used to monitor the progress of award recipients as they fulfill their service obligation, namely, to work in positions related to national security.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: September 29, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–23471 Filed 10–1–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing this notice to announce an open meeting of the Strategic Environmental Research and Development Program, Scientific Advisory Board (SAB). This meeting will be open to the public.

DATES: Wednesday, October 22, 2014, from 8:30 a.m. to 2:45 p.m.

ADDRESSES: 901 N. Stuart Street, Suite 200, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Andrews, SERDP Office, 4800 Mark Center Drive, Suite 17D08, Alexandria, VA 22350–3605; or by telephone at (571) 372–6565.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

The purpose of the October 22, 2014 meeting is to review new start research and development projects requesting Strategic Environmental Research and Development Program funds as required by the SERDP Statute, U.S. Code—Title 10, Subtitle A, Part IV, Chapter 172, § 2904. The full agenda follows:

8:30 a.m. Convene	Dr. Joseph Hughes, Chair.
8:40 a.m. Resource Conservation and Climate Change Overview	Dr. John Hall, Resource Conservation and Climate Change, Program Manager.
8:50 a.m. 15 RC01–035 (RC–2510): Global Change, Vulnerability and Resilience: Management Options for an Uncertain Future (FY15 New Start).	Dr. Craig Allen, University of Nebraska-Lincoln, Lincoln NE.
9:35 a.m. 15 RC01–012 (RC–2508): Conserving Threatened Plants in a Non-stationary World: A Predictive Framework for Assessing Risks and Guiding Management (FY15 New Start).	Dr. Dov Sax, Brown University, Providence, RI.
10:20 a.m. Break	
10:35 a.m. 15 RC01–157 (RC–2509): Empirical Dynamics: A New Paradigm for Understanding and Managing Species and Ecosystems in a Non-Stationary Nonlinear World (FY15 New Start).	Dr. George Sugihara, Scripps Institution of Oceanography, La Jolla, CA.
11:20 a.m. 15 RC01–087 (RC–2511): Flow-Population Models for Tracking Non-Stationary Changes in Riparian and Aquatic Ecosystems (FY15 New Start).	Dr. David Lytle, Oregon State University, Corvallis, OR.
12:05 p.m. Lunch	
1:05 p.m. Resource Conservation and Climate Change Overview	Dr. John Hall, Resource Conservation and Climate Change, Program Manager.
1:15 p.m. 15 RC01–096 (RC–2512) : Evaluating the Use of Spatially Explicit Population Models to Predict Conservation Reliant Species in Nonanalogue Future Environments on DoD Lands (FY15 New Start).	Dr. Brian Hudgens, Institute for Wildlife Studies, Arcata, CA.
2:00 p.m. 14 RC01–031 (RC–2447): Control and Mitigation of Aquatic Invasive Species in Pacific Island Streams (FY14 New Start).	Dr. Michael Blum, Tulane University, New Orleans, LA.
2:45 p.m. Public Discussion/Adjourn	

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 statements to the Strategic Environmental Research and

Development Program, Scientific Advisory Board. Written statements may be submitted to the committee at any time or in response to an approved meeting agenda.

All written statements shall be submitted to the Designated Federal Officer (DFO) for the Strategic Environmental Research and Development Program, Scientific Advisory Board. The DFO will ensure that the written statements are provided to the membership for their consideration. Contact information for the DFO can be obtained from the GSA's FACA Database at *http://www.facadatabase.gov/.*

Time is allotted at the close of each meeting day for the public to make comments. Oral comments are limited to 5 minutes per person.

Dated: September 29, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–23474 Filed 10–1–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery Honor Subcommittee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Honor Subcommittee of the Advisory Committee on Arlington National Cemetery (ACANC). The meeting is open to the public. For more information about the Committee and the Honor Subcommittee, please visit *http://www.arlingtoncemetery.mil/AboutUs/FocusAreas.aspx.*

DATES: The Honor Subcommittee will meet from 9:00 a.m.–10:30 a.m. on Wednesday, October 22, 2014.

ADDRESSES: Women in Military Service for America Memorial, Conference Room, Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Ms. Renea C. Yates; Designated Federal Officer for the committee and the Honor Subcommittee, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at *renea.c.yates.civ@mail.mil,* or by phone at 703–614–1248.

SUPPLEMENTARY INFORMATION: This subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. § 552b, as amended) and 41 Code of the Federal Regulations (CFR § 102–3.150).

Purpose of the Meeting: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the committee's advice and recommendations. The primary purpose of the Honor Subcommittee is to review and provide recommendations to the parent committee on extending the future locations and availability of active burial gravesites at Arlington National Cemetery, veteran eligibility criteria, and master planning.

Proposed Agenda: The subcommittee will receive an update on the status of concept development for the Tomb of Remembrance and initial concept planning for cueing/staging lanes for funeral services.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Women in Military Service for America is fully handicapped accessible. For additional information about public access procedures, contact Ms. Renea Yates, the subcommittee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR § 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Ms. Renea Yates, the subcommittee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. The Designated Federal Officer will review all timely submitted written comments or statements with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. Pursuant to 41 CFR 102–3.140d, the subcommittee is not obligated to allow the public to speak; however, interested persons may submit a written statement or a request to speak for consideration by the subcommittee. After reviewing any written statements or requests submitted, the subcommittee Chairperson and the Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–23358 Filed 10–1–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Advisory Committee on Arlington National Cemetery (ACANC). The meeting is open to the public. For more information about the Committee, please visit *http://www.arlingtoncemetery.mil/AboutUs/FocusAreas.aspx.*

DATES: The Committee will meet from 9:30 a.m.–3:30 p.m. on October 23, 2014.

ADDRESSES: Women in Military Service for America Memorial, Conference Room, Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Ms. Renea C. Yates; Designated Federal Officer for the Committee, in writing at Arlington National Cemetery, Arlington, VA 22211, or by email at *renea.c.yates.civ@mail.mil,* or by phone at 703–614–1248.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. § 552b, as amended) and 41 Code of the Federal Regulations (CFR § 102–3.150).

Purpose of the Meeting: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the Committee's advice and recommendations.

Proposed Agenda: The Committee will receive updates on the ANC Master Plan, major construction and expansion projects, historical mementos displays update; status of monument preservation and request for commemorative monuments update; and visitor enhancements; specifically cueing and staging lanes.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Women in Military Service for America is readily accessible to and usable by persons with disabilities. For additional information about public access procedures, contact Ms. Renea Yates, the Committee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR §§ 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Committee, in response to the stated agenda of the open meeting or in regard to the Committee's mission in general. Written comments or statements should be submitted to Ms. Renea Yates, the Committee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the Committee. The Designated Federal Officer will review all timely submitted written comments or statements with the Committee Chairperson, and ensure the comments are provided to all members of the Committee before the meeting. Written comments or statements received after this date may not be provided to the Committee until its next meeting. Pursuant to 41 CFR § 102–3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) days in advance to the Committee's Designated Federal Official, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The Designated Federal Official will log each request, in the order received, and in consultation with the Committee Chair determine whether the subject matter of each comment is relevant to the Committee's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the Designated Federal Official.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–23360 Filed 10–1–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery Remember Subcommittee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Remember Subcommittee of the Advisory Committee on Arlington National Cemetery (ACANC). The meeting is open to the public. For more information about the Committee and the Honor Subcommittee, please visit *http://www.arlingtoncemetery.mil/AboutUs/FocusAreas.aspx*.

DATES: The Remember Subcommittee will meet from 11:00 a.m. to 12:30 p.m. on October 22, 2014.

ADDRESSES: Women in Military Service for America Memorial, Conference Room, Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Ms. Renea C. Yates; Designated Federal Officer for the committee and the Remembrance Subcommittee, in writing at Arlington National Cemetery, Arlington, VA 22211, or by email at *renea.c.yates.civ@mail.mil,* or by phone at 703–614–1248.

SUPPLEMENTARY INFORMATION: This subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3.150).

Purpose of the Meeting: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the committee's advice and recommendations. The primary purpose of the Remember Subcommittee is to review and provide recommendations on preserving and care for the marble components of the Tomb of the Unknown Soldier, including addressing the cracks in the large marble sarcophagus, the adjacent marble slabs,

and the disposition of the dye block already gifted to the Army.

Proposed Agenda: The subcommittee will receive an update on the status of all monument restorations. The subcommittee also will discuss the committee process for review of memorial monument requests pending with the Department of the Army for placement at Arlington National Cemetery.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Women in Military Service for America is fully handicapped accessible. For additional information about public access procedures, contact Ms. Renea Yates, the subcommittee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Ms. Renea Yates, the subcommittee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. The Designated Federal Officer will review all timely submitted written comments or statements with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement or a request to speak for consideration by the subcommittee. After reviewing any written statements or requests submitted, the subcommittee Chairperson and the Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–23357 Filed 10–1–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–134–000.
Applicants: American Transmission Company LLC (ATC).
Description: Amendment to September 5, 2014 Application for Authority to Acquire Transmission Facilities Under Section 203 of the FPA of American Transmission Company LLC.
Filed Date: 9/25/14.
Accession Number: 20140925–5099.
Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: EC14–138–000.
Applicants: Montauk Energy Holdings, LLC, Bowerman Power LFG, LLC, McKinney LFG, LLC, Monmouth Energy, Inc., TX LFG Energy, LP, Toyon Landfill Gas Conversion, LLC, Tulsa LFG, LLC.
Description: Supplement to September 9, 2014 Application for Authorization under Section 203 of the Federal Power Act; Request for Expedited Consideration; and Request for Confidential Treatment of Montauk Energy Holdings, LLC, *et al.*
Filed Date: 9/25/14.
Accession Number: 20140925–5108.
Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: EC14–149–000.
Applicants: Apex Petroleum Corporation.
Description: Application of Apex Petroleum Corporation for Authorization under FPA Section 203 for the Disposition of Jurisdictional Facilities, Request for Expedited Consideration, Waivers and Confidential Treatment.
Filed Date: 9/25/14.
Accession Number: 20140925–5080.
Comments Due: 5 p.m. ET 10/16/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–2308–001.
Applicants: Waterside Power, LLC.
Description: Compliance filing per 35: Supplement to Filing of Triennial Market Power Analysis for the NE Region to be effective 7/1/2014.
Filed Date: 9/25/14.
Accession Number: 20140925–5110.
Comments Due: 5 p.m. ET 10/16/14.

Docket Numbers: ER14–2465–001.
Applicants: RE Columbia Two LLC.
Description: Tariff Amendment per 35.17(b): Amendment to Baseline-Deficiency Response 092414 to be effective 9/7/2014.
Filed Date: 9/24/14.
Accession Number: 20140924–5147.
Comments Due: 5 p.m. ET 10/15/14.

Docket Numbers: ER14–2938–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Western Reclamation District 2035 DFA Filing to be effective 9/25/2014.
Filed Date: 9/24/14.
Accession Number: 20140924–5148.
Comments Due: 5 p.m. ET 10/15/14.

Docket Numbers: ER14–2939–000.
Applicants: Imperial Valley Solar Company (IVSC) 2, LLC.
Description: Initial rate filing per 35.12 Application for Initial Market-Based Rate Tariff and Granting Certain Waivers to be effective 11/24/2014.
Filed Date: 9/25/14.
Accession Number: 20140925–5013.
Comments Due: 5 p.m. ET 10/16/14.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF14–787–000.
Applicants: Ken's Foods, Inc.
Description: Form 556 of Ken's Foods, Inc.
Filed Date: 9/24/14.
Accession Number: 20140924–5077.
Comments Due: None Applicable.

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: September 25, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23487 Filed 10–1–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–1271–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) rate filing per 154.403(d)(2): Fuel Tracker Filing Effective November 2014 to be effective 11/1/2014.
Filed Date: 9/24/14.
Accession Number: 20140924–5060.
Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: RP14–1272–000.
Applicants: National Grid LNG, LLC.
Description: Compliance filing per 154.203: Petition for Approval of Settlement.
Filed Date: 9/24/14.
Accession Number: 20140924–5086.
Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: RP14–1273–000.
Applicants: Enable Mississippi River Transmission, L.
Description: 2014 Penalty Revenue Credit Filing for Enable Mississippi River Transmission, LLC.
Filed Date: 9/24/14.
Accession Number: 20140924–5087.
Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: RP14–1274–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Compliance filing per 154.203: Annual Cash-Out Report Period Ending July 31, 2014.
Filed Date: 9/24/14.
Accession Number: 20140924–5116.
Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: RP14–1275–000.
Applicants: Mojave Pipeline Company, L.L.C.
Description: Compliance filing per 154.203: Petition to Amend and/or Approval of S&A assoc. with Docket No. RP10–1082 to be effective 12/31/9998.
Filed Date: 9/24/14.
Accession Number: 20140924–5136.
Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: RP14–1276–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) rate filing per 154.204: Amendment to Neg Rate Agmt (QEP 36601–26) to be effective 10/1/2014.
Filed Date: 9/25/14.
Accession Number: 20140925–5012.
Comments Due: 5 p.m. ET 10/7/14.

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: September 25, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23426 Filed 10–1–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–1268–000.
Applicants: Dominion Transmission, Inc.
Description: § 4(d) rate filing per 154.204: DTI—September 23, 2014 Negotiated Rate Agreement to be effective 10/1/2014.
Filed Date: 9/23/14.
Accession Number: 20140923–5085.
Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: RP14–1269–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: § 4(d) rate filing per 154.601: Removal of Non Conforming Agreement with Bill Barrett Corporation to be effective 10/24/2014.

Filed Date: 9/23/14.

Accession Number: 20140923–5116.

Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: RP14–1270–000.

Applicants: Enable Mississippi River Transmission, L.

Description: § 4(d) rate filing per 154.403(d)(2): 2014 Fuel Adjustment Filing to be effective 11/1/2014.

Filed Date: 9/23/14.

Accession Number: 20140923–5136.

Comments Due: 5 p.m. ET 10/6/14.

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.

Filings in Existing Proceedings

Docket Numbers: RP14–1172–001.

Applicants: Steckman Ridge, LP.

Description: Compliance filing per 154.203: RP14–1172–000 Compliance Filing to be effective 8/6/2014.

Filed Date: 9/23/14.

Accession Number: 20140923–5044.

Comments Due: 5 p.m. ET 10/6/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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: September 24, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23425 Filed 10–1–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF14–16–000]

Columbia Gulf Transmission, LLC; Notice of Intent To Prepare an Environmental Assessment for the Planned Cameron Access 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 Cameron Access Project (Project) involving construction and operation of facilities by Columbia Gulf Transmission, LLC (Columbia Gulf) in Jefferson Davis, Calcasieu, and Cameron Parishes, Louisiana. The Commission will use this EA in its decision-making process to determine whether the planned 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 planned Project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on October 27, 2014.

You may submit comments in written form. Further details on how to submit written comments are in the Public Participation section of this notice.

This notice is being sent to the Commission's current environmental mailing list for this planned Project. State and local government representatives should notify their constituents of this planned 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 planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the planned 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.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). 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.

Summary of the Planned Project

Columbia Gulf has announced their plans to expand and operate the existing Columbia Gulf West Lateral to increase the capacity of the Columbia Gulf system. The planned Cameron Access Project would provide improvements to the existing Columbia Gulf West Lateral pipeline and compression facilities to provide for additional market access to the existing Cameron LNG Terminal. Columbia Gulf plans to begin Project construction in September 2016 if all required permits, certificates, and authorizations are obtained. The Cameron Access Project would include the following facilities:

- 7.9 miles of 30-inch diameter natural gas pipeline loop [1] and associated ancillary facilities, designated West Lateral (WL) 400 Loop (400L), in Jefferson Davis Parish;
- 27.2 miles of 36-inch-diameter natural gas pipeline and associated ancillary facilities, designated WL 400, in Jefferson Davis, Cameron, and Calcasieu parishes (WL 400);
- one new point of delivery meter station, designated MS–4246, in Cameron Parish; and
- one new 10,200 horsepower compressor station, designated the Lake Arthur Compressor Station, in Jefferson Davis Parish.

Maps depicting the general location of the planned Project facilities are included in appendix 1.[2]

Land Requirements for Construction

Columbia Gulf is still in the planning phase for the planned Project and construction workspace requirements have not been finalized. However, construction would typically require a right-of-way width of 125 feet in uplands and 75 feet in wetlands. Columbia Gulf has estimated that 586 acres would be required for construction and 262 acres for operation of the Project.

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 Project under these general headings:

- geology and soils;
- water resources and wetlands;
- fish, wildlife, and vegetation;
- threatened and endangered species;
- land use, recreation, and visual resources;
- air quality and noise;
- cultural resources;
- socioeconomics;
- reliability and public safety; and
- cumulative environmental impacts.

We will also evaluate reasonable alternatives to the planned Project or portions of the planned Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

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

[1] Looping is when one pipeline is laid parallel to another and is often used as a way to increase capacity along a right-of-way beyond what is possible on one line, or an expansion of an existing pipeline.

[2] The appendices referenced in this notice are not being printed 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.

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 on page 5.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to 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.

Public Participation

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. The more specific your comments, the more useful they will be. 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 October 27, 2014.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances, please reference the Project docket number (PF14–16–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Indian 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 planned Project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

Once Columbia Gulf files its application with the Commission, 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 User's Guide under the ''eFiling'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the Project.

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., PF14–16). 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 now 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 meetings 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: September 26, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23491 Filed 10–1–14; 8:45 am]

BILLING CODE 6717–01–P

[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.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–2939–000]

Imperial Valley Solar Company (IVSC) 2, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Imperial Valley Solar Company (IVSC) 2, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is October 16, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: September 26, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23489 Filed 10–1–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–427–001 and ER03–427–002]

Mesquite Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Mesquite Power, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is October 10, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: September 26, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23488 Filed 10–1–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as

having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. P–10808–000	9–25–14	Larry Woodard.
2. CP14–17–000	9–25 to 26–14	Chain emails.[1]
Exempt:		
1. CP13–483–000; CP13–492–000	8–13–14	FERC Staff.[2]
2. P–2629–014	8–13–14	Melissa Grader.
3. P–13346–000	8–14–14	Hon. Todd Young.
4. CP13–492–000	8–14–14	Dept. of the Army.
5. CP13–483–000; CP13–492–000	9–10–14	FERC Staff.[3]
6. CP13–483–000	9–15–14	FERC Staff.[4]
7. CP14–529–000	9–15–14	United South & Eastern Tribes, Inc.
8. CP14–529–000	9–18–14	United States Congress.[5]
9. P–405–000	9–19–14	Hon. Benjamin L. Cardin.
10. P–10808–000	9–23–14	Hon. Dave Camp.

[1] 19 Chain emails have been sent to FERC staff under this docket number.
[2] Telephone record.
[3] Telephone record.
[4] Telephone record.
[5] Hons. Elizabeth A. Warren, Edward J. Markey, Richard E. Neal, and James P. McGovern.

Dated: September 26, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23492 Filed 10–1–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD14–7–000]

North American Electric Reliability Corporation, Errata Notice

On June 19, 2014, the Commission issued an ''Order Approving Reliability Standard'' in the above-captioned proceeding. *North American Electric Reliability Corporation,* 147 FERC ¶ 61,226 (2014) (June 19 Order). Subsequently, on August 29, 2014, the Commission issued a ''Commission Information Collection Activities (FERC–725Y); Comment Request'' associated with approval of the June 19 Order. (August 29 Comment Request).

This errata notice serves to correct paragraphs 32 and 33 of the June 19 Order, and to make corresponding corrections in the August 29 Comment Request. In paragraph 32 of the June 19 Order, the phrase ''approximately 387 entities'' is deleted and replaced with the phrase ''no more than 1,266 entities'' so that the last sentence of paragraph 32 reads as follows:

''The number of unique entities responding will be no more than 1,266 entities registered as a reliability coordinator, balancing authority, transmission operator, transmission owner, or generator operator.''

The same correction is made in the paragraph titled ''*Estimate of Annual Burden* [3]'' of the August 29 Comment Request.

In addition, the second (non-heading) row of the chart in paragraph 33 of the June 19 Order labelled ''(One-time) Development of a training program [R5]'' is deleted and replaced with the following:

''(One-Time) Development of a training program [R5—13 hrs.] & (on-going) record retention [M5 and C.1.2—2 hrs.].''

The same correction is made to the chart following the paragraph titled ''*Estimate of Annual Burden* [3]'' of the August 29 Comment Request.

Dated: September 25, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23427 Filed 10–1–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the Southern Company Services, Inc.

The Southeastern Regional Transmission Planning (SERTP) Process 3rd Quarter Meeting

September 30, 2014, 10:00 a.m.–1:00 p.m., Local Time

The above-referenced meeting will be via web conference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *www.southeasternrtp.com.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket Nos. ER13–83, ER13–1928, *Duke Energy Carolinas/Carolina Power & Light*

Docket Nos. ER13–908, ER13–1941, *Alabama Power Company et al.*

Docket Nos. ER13–913, ER13–1940, *Ohio Valley Electric Corporation*
Docket Nos. ER13–897, ER13–1930, *Louisville Gas and Electric Company and Kentucky Utilities Company*
Docket Nos. ER13–107, ER13–1935, *South Carolina Electric & Gas Company*
Docket Nos. ER13–80, ER13–1932, *Tampa Electric Company*
Docket No. ER13–86, *Florida Power Corporation*
Docket Nos. ER13–104, ER13–1929, *Florida Power & Light Company*
Docket No. ER13–1922, *Duke Energy Florida (Progress Energy Florida)*
Docket Nos. ER13–195, ER13–198, ER13–1927, ER13–1936, *PJM Interconnection, L.L.C.*
Docket No. ER13–90, *Public Service Electric and Gas Company and PJM Interconnection, L.L.C.*

For more information, contact Valerie Martin, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6139 or *Valerie.Martin@ferc.gov.*

Dated: September 26, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23490 Filed 10–1–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[A–1–FRL–9917–37–Region–1]

Notice of Decision To Issue a Clean Air Act PSD Permit for Salem Harbor Redevelopment Project

AGENCY: Environmental Protection Agency.

ACTION: Notice of final action.

SUMMARY: This notice announces that the Massachusetts Department of Environmental Protection (MassDEP) issued a final permit decision for a Clean Air Act Prevention of Significant Deterioration (PSD) permit (Transmittal Number X254064) to Footprint Power Salem Harbor Development, LP for the construction of the Salem Harbor Redevelopment (SHR) Project.

DATES: MassDEP issued a final PSD permit decision for the SHR on September 11, 2014. The PSD permit for SHR became final and effective on September 11, 2014. Pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this final permit decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the First Circuit within 60 days of October 2, 2014.

ADDRESSES: Documents relevant to the above-referenced permit are available for public inspection during normal business hours at the following address: Massachusetts Department of Environmental Protection, Northeast Regional Office, 205B Lowell Street, Wilmington, MA 01887.

FOR FURTHER INFORMATION CONTACT: Ida E. McDonnell, Manager, Air Permits, Toxics and Indoor Programs Unit, Environmental Protection Agency, EPA New England Regional Office, (617) 918–1653, *mcdonnell.ida@epa.gov.* Key portions of the administrative record for this permit decision (including the final permit, all public comments, MassDEP's responses to the public comments, and additional supporting information) are available through a link at MassDEP's Web site at: *http://www.mass.gov/eea/agencies/massdep/air/approvals/footprint.html.* Anyone who wishes to review the Environmental Appeals Board (EAB or Board) decisions described below or the documents in the EAB's electronic docket for its decision related to this matter can obtain them at *http://www.epa.gov/eab/.*

SUPPLEMENTARY INFORMATION: The MassDEP, acting under authority of an April 11, 2011 PSD delegation agreement with EPA Region 1, issued a final PSD permit decision on January 30, 2014 to the Footprint Power Salem Harbor Development, LP authorizing construction and operation of the SHR project. Four commenters jointly filed a petition seeking review of MassDEP's January 30, 2014 permit decision for the SHR project with the EPA EAB. On September 2, 2014, the Board issued an order denying review. See *In re Footprint Power Salem Harbor Development, LP,* PSD Appeal No. 14–02, Slip opinion (EAB September 2, 2014), 16E.A.D__. Following denial of review, pursuant to 40 CFR 124.19(l)(2), MassDEP issued a final permit decision to the SHR project on September 11, 2014. All conditions of the SHR PSD permit, Transmittal No. X254064, became final and effective on September 11, 2014.

Dated: September 18, 2014.

Deborah A. Szaro,

Acting Regional Administrator, EPA New England.

[FR Doc. 2014–23539 Filed 10–1–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9917–36–Region–1]

Availability of Final NPDES General Permits Mag250000 and Nhg250000 for Discharges of Non-Contact Cooling Water in Massachusetts and New Hampshire

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency (EPA)—Region 1, is providing a notice of availability of the final National Pollutant Discharge Elimination System (NPDES) Non-contact Cooling Water General Permit (NCCW GP) for Massachusetts and New Hampshire. The general permit replaces the NCCW GP that expired on July 31, 2013.

DATES: The NCCW GP shall be effective on November 3, 2014 and will expire at midnight on November 4, 2019.

ADDRESSES: The required notice of intent (NOI) information to obtain permit coverage is provided in the NCCW GP. This information shall be submitted to both EPA and the appropriate state agency. NOIs may be sent via regular or overnight mail to EPA—Region 1, NCCW GP Processing OEP 06–4, 5 Post Office Square—Suite 100, Boston, Massachusetts 02109–3912 and the appropriate state agency at the addresses listed in in Appendix 6 of the NCCW GP.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the NCCW GP may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday, excluding holidays, by contacting Suzanne Warner, Office of Ecosystem Protection (OEP 06–4), 5 Post Office Square—Suite 100, Boston, MA 02109–3912; telephone: 617–918–1383; email: *warner.suzanne@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is proposing to reissue two general permits for non-contact cooling water discharges to certain waters in the Commonwealth of Massachusetts and the State of New Hampshire. While the general permits are two distinct permits, for convenience, EPA has grouped them together in a single document and will refer to them as a singular ''permit''. The general permit, appendices and fact sheet are available online at: *http://www.epa.gov/region1/npdes/nccwgp.html.*

The general permit establishes NOI requirements, effluent limitations, standards, prohibitions, and in some

cases best technology available (BTA) requirements for facilities that discharge small amounts of non-contact cooling water in Massachusetts and New Hampshire.

Non-contact cooling water is water used for cooling that does not come into contact with any raw material, intermediate product, waste product, or finished product; the only anticipated pollutant is heat. Discharges composed of anything other than non-contact cooling water will not be granted coverage under this general permit. Those dischargers must seek coverage under an individual permit or an appropriate general permit.

The permit includes effluent limitations based on best professional judgment (BPJ) and water quality considerations. The effluent limits established in the permit assure that the surface water quality standards of the receiving water are maintained and/or attained. The permit also contains BTA requirements for cooling water intake structures for facilities that withdraw less than 1 million gallons per day of surface water for non-contact cooling in order to ensure source water protection. For facilities that use groundwater or municipal drinking water for non-contact cooling, the permit establishes effluent limitations and/or additional monitoring for expected constituents (metals and residual chlorine, respectively).

Other Legal Requirements

Endangered Species Act (ESA)

EPA has updated the provisions and necessary actions and documentation related to potential impacts to endangered species from facilities seeking coverage under the NCCW GP. EPA has requested concurrence from the appropriate federal services (U.S. Fish and Wildlife Service and National Marine Fisheries Service) regarding the requirements of this general permit.

National Historic Preservation Act (NHPA)

In accordance with NHPA, EPA has established provisions and documentation requirements for facilities seeking coverage under the NCCW GP to ensure that discharges or actions taken under this permit will not adversely affect historic properties and places.

Authority: This action is being taken under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: September 24, 2014.

Carl Dierker,

Acting Regional Administrator, Region 1.

[FR Doc. 2014–23537 Filed 10–1–14; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration Board, Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATES: *Date and Time:* The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 9, 2014, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- September 11, 2014

B. New Business

- Pension Benefits Disclosure—Proposed Rule

Dated: September 30, 2014.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2014–23625 Filed 9–30–14; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0685]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before November 3, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the

information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0685.

Title: Updating Maximum Permitted Rates for Regulated Services and Equipment, FCC Form 1210; Annual Updating of Maximum Permitted Rates for Regulated Cable Services, FCC Form 1240.

Form Number: FCC Form 1210 and FCC Form 1240.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 3,400 respondents; 5,350 responses.

Estimated Time per Response: 1 hour to 15 hours.

Frequency of Response: Annual reporting requirement; Quarterly reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 4(i) and 623 of Communications Act of 1934, as amended.

Total Annual Burden: 44,800 hours.

Total Annual Cost: $3,196,875.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Cable operators use FCC Form 1210 to file for adjustments in maximum permitted rates for regulated services to reflect external costs. Regulated cable operators submit this form to local franchising authorities.

FCC Form 1240 is filed by cable operators seeking to adjust maximum permitted rates for regulated cable services to reflect changes in external costs.

Cable operators submit Form 1240 to their respective local franchising authorities (''LFAs'') to justify rates for the basic service tier and related equipment or with the Commission (in situations where the Commission has assumed jurisdiction).

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–23430 Filed 10–1–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 14–28; DA 14–1385]

Panelist Information for Open Internet Roundtables

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing panelist names and other information for a series of roundtables. The intended effect of this document is to make the public aware of the event and the agenda for the roundtables.

DATES: Thursday, October 2, 2014, 1:30 p.m.–5:00 p.m.

ADDRESSES: Federal Communications Commission, Commission Meeting Room (TW–C305), 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tim Brennan, Office of Strategic Planning and Policy Analysis at (202) 418–2031 or by email at *Tim.Brennan@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in GN Docket No. 14–28; DA 14–1385 released September 24, 2014. The complete text in this document is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is available on the Commission's Web site at *http://www.fcc.gov.*

The roundtables will be free and open to the public, and the FCC also will stream them live at *http://www.fcc.gov/live.* The location of the roundtables will be the Commission Meeting Room (TW–C305), 445 12th Street SW., Washington, DC 20554. The FCC will make available an overflow room for those in-person attendees who cannot be accommodated in the Commission Meeting Room. We advise persons planning to attend the roundtables in person to leave sufficient time to enter through building security.

The FCC encourages members of the public to submit suggested questions in advance and during the roundtables by email to *roundtables@fcc.gov* or on Twitter using the hashtag #FCCRoundtables. Please note that by submitting a question, you will be making a filing in an official FCC proceeding. All information submitted, including names, addresses, and other personal information contained in the message, may be publicly available online.

Reasonable accommodations for people with disabilities are available upon request. The request should include a detailed description of the accommodation needed and contact information. We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Proposed Agenda

The Office of Strategic Planning & Policy Analysis of the Federal Communications Commission (FCC) provides panelist names and other information about an event in the Open Internet roundtable series: ''Economics of Broadband: Market Successes and Market Failures,'' which will take place on October 2, 2014. This roundtable was previously announced in a Notice. At that time, it was unclear whether the roundtable would be a ''meeting'' of the Commission. As such, that Notice was not published in the **Federal Register**. This Notice shall serve as notice that a quorum of Commissioners may be present at the roundtable, in compliance with part 0, Subpart F of the Commission's rules. This Notice does not, however, change the ''permit-but-disclose'' status of the *Open Internet* proceeding under the Commission's *ex parte* rules.

Economics of Broadband: Market Successes and Market Failures

1:30–1:45 p.m. Welcome and Opening Remarks

1:45–5:00 p.m. Economics of Broadband: Market Successes and Market Failures

This roundtable will first consider incentives to provide high quality open internet access service and the relevance of market power. It will then turn to policies to address market power, consumer protection, and shared benefits of the Internet.

Panelists:

Jonathan Baker, Professor, Washington College of Law, American University

Nicholas Economides, Professor of Economics and Executive Director of the NET Institute, Stern School of Business, New York University

Thomas Hazlett, Hugh H. Macaulay Endowed Professor, Department of Economics, Clemson University

Christiaan Hogendorn, Associate Professor, Department of Economics, Wesleyan University

John Mayo, Professor of Economics, Business and Public Policy, McDonough School of Business, Georgetown University

Hal Singer, Principal, Economists Inc.; Senior Fellow, Progressive Policy Institute

Moderators:

Tim Brennan, Chief Economist, FCC

Jonathan Levy, Deputy Chief Economist, FCC

Federal Communications Commission.

Tim Brennan,

Chief Economist, Office of Strategic Planning and Policy Analysis.

[FR Doc. 2014–23564 Filed 10–1–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, October 7, 2014 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 52 U.S.C. 30109 (formerly 2 U.S.C. 437g). Matters concerning participation in civil actions or proceedings or arbitration. Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2014–23632 Filed 9–30–14; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 17, 2014.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Paulson 2014 Trust, Mason City, Iowa, the trustees of which are Kirk S. Paulson, Mason City, Iowa, Sarah C. Walter, Kingsport, Tennessee, Kris S. Paulson, Mason City, Iowa, and Dean A. Moretz, Northwood, Iowa, and the Paulson 2014 Trust together with Kirk S. Paulson, Sarah C. Walter and Kris S. Paulson,* as a family control group acting in concert to acquire voting shares of Northwood Financial Services Corporation, Northwood, Iowa, and thereby indirectly acquire voting shares of NSB Bank, Mason City, Iowa.

Board of Governors of the Federal Reserve System, September 29, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–23461 Filed 10–1–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Assistant Secretary for Planning and Evaluation; Statement on Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Planning and Evaluation (ASPE), the authority vested in the Secretary to carry out activities relating to building data capacity for comparative clinical effectiveness research under 42 U.S.C. 299b–37. This authority may be re-delegated and shall be exercised in accordance with the Department's applicable policies, procedures, and guidelines. I hereby affirm and ratify any actions taken by the Assistant Secretary for Planning and Evaluation, or his or her subordinates, involving the exercise of these authorities prior to the effective date of this delegation. This delegation is effective upon date of signature.

Dated: September 26, 2014.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2014–23466 Filed 10–1–14; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Council on Alzheimer's Research, Care, and Services; Meeting

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). The Advisory Council on Alzheimer's Research, Care, and Services provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias on people with the disease and their caregivers. During the October meeting, the Advisory Council will hear presentations on the basics of long-term care, including presentations on programs, settings, and payers. The Council will use a portion of the meeting to review the work it has accomplished thus far towards the 2025 goals, and then discuss the process for developing recommendations for the 2015 update to the National Plan. The Council will also hear presentations from the three subcommittees (Research, Clinical Care, Long-Term Services and Supports, and Ethics).

DATES: The meeting will be held on October 27th, 2014 from 9 a.m. to 5 p.m. EDT.

ADDRESSES: The meeting will be held in Room 800 in the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Comments: Time is allocated mid-morning on the agenda to hear public comments. The time for oral comments will be limited to two (2) minutes per individual. In lieu of oral comments, formal written comments may be submitted for the record to Rohini Khillan, OASPE, 200 Independence Avenue SW., Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION: Rohini Khillan (202) 690–5932, *rohini.khillan@hhs.gov.* Note: Seating may be limited. Those wishing to attend the meeting must send an email to *napa@hhs.gov* and put ''October 27 Meeting Attendance'' in the Subject line by Friday, October 17, so that their names may be put on a list of expected attendees and forwarded to the security officers at the Department of Health and Human Services. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice. If you wish to make a public comment, you must note that within your email.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). Topics of the Meeting: The Advisory Council will hear presentations on the basics of long-term care, including presentations on programs, settings, and payers. The Council will use a portion of the meeting to review the work it has accomplished thus far towards the 2025 goals, and then discuss the process for developing recommendations for the 2015 update to the National Plan. The Council will also hear presentations from the three subcommittees (Research, Clinical Care, Long-Term Services and Supports, and Ethics).

Procedure and Agenda: This meeting is open to the public. Please allow 30 minutes to go through security and walk to the meeting room. The meeting will also be webcast at *www.hhs.gov/live* .

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: September 22, 2014.

Richard G. Frank,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2014–23411 Filed 10–1–14; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0616]

Content of Premarket Submissions for Management of Cybersecurity in Medical Devices; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Content of Premarket Submissions for Management of Cybersecurity in Medical Devices.'' This guidance identifies cybersecurity issues that manufacturers should consider in preparing premarket submissions for medical devices in order to maintain information confidentiality, integrity, and availability.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for single copies of the guidance document entitled ''Content of Premarket Submissions for Management of Cybersecurity in Medical Devices'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5431, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 71, rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Abiy Desta, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1682, Silver Spring, MD 20993–0002, 301–796–0293, *Abiy.Desta@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance provides recommendations to consider and document in FDA medical device premarket submissions to provide effective cybersecurity management and to reduce the risk that device functionality is intentionally or unintentionally compromised. The need for effective cybersecurity to assure medical device functionality has become more important with the increasing use of wireless, Internet- and network-connected devices and the frequent electronic exchange of medical device-related health information.

In the **Federal Register** of June 14, 2013 (78 FR 35940), FDA announced the availability of the draft guidance document. Interested persons were invited to comment by September 12, 2013. Multiple comments were received and in response to these comments, FDA revised the guidance document and policies as appropriate to clarify the types of cybersecurity issues that manufacturers should consider in preparing premarket submissions for medical devices in order to maintain information confidentiality, integrity, and availability.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the Agency's current thinking on management of cybersecurity in medical devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative

approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.* Persons unable to download an electronic copy of ''Content of Premarket Submissions for Management of Cybersecurity in Medical Devices,'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1825 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 814, subpart H, have been approved under OMB control number 0910–0332; and the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: September 26, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–23457 Filed 10–1–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Common Data Platform (CDP)—NEW

The Common Data Platform (CDP) includes new instruments for the Substance Abuse and Mental Health Services Administration (SAMHSA). The CDP will replace separate data collection instruments used for reporting Government Performance and Results Act of 1993 (GPRA) measures: The TRansformation ACcountability (TRAC) Reporting System (OMB No. 0930–0285) used by the Center for Mental Health Services (CMHS); the Prevention Management Reporting and Training System (PMRTS—OMB No. 0930–0279) used by the Center for Substance Abuse Prevention (CSAP); and the Services Accountability and Improvement System (SAIS—OMB No. 0930–0208) used by the Center for Substance Abuse Treatment (CSAT).

The CDP will also include two grantee-level data collection forms approved by consensus of offices and Centers within SAMHSA as well as the Department of Health and Human Services (HHS): the Infrastructure, Prevention, and Mental Health Promotion (IPP) Form used by a subset of CMHS grantees and the Aggregate Tool used by CSAT's Addiction Technology Transfer Center (ATCC) grantees.

Approval of this information collection will allow SAMHSA to continue to meet Government Performance and Results Modernization Act of 2010 (GPRAMA) reporting requirements and analyses of the data will help SAMHSA determine whether progress is being made in achieving its mission. The primary purpose of this data collection system is to promote the use of common data elements among SAMHSA grantees and contractors. The common elements were recommended by consensus among SAMHSA Centers and Offices. Analyses of these data will allow SAMHSA to quantify effects and accomplishments of its discretionary grant programs which are consistent with the OMB-approved GPRA measures and address goals and objectives outlined in the Office of National Drug Control Policy's Performance Measures of Effectiveness and the SAMHSA Strategic Initiatives.

The CDP will be a real-time, performance management system that captures information on substance abuse treatment and prevention and mental health services delivered in the United States. A wide range of client and program information will be captured through CDP for approximately 3,000 grants (2,224 for CMHS; 642 for CSAT; 122 for CSAP; and 33 for HIV Continuum of Care). Substance abuse treatment facilities, mental health service providers, and substance abuse prevention programs will submit their data in real-time or on a monthly or a weekly basis to ensure that the CDP is an accurate, up-to-date reflection on the scope of services delivered and characteristics of the clients.

In order to carry out section 1105(a)(29) of GPRA, SAMHSA is required to prepare a performance plan for its major programs of activity. This plan must:

- Establish performance goals to define the level of performance to be achieved by a program activity;
- Express such goals in an objective, quantifiable, and measurable form;
- Briefly describe the operational processes, skills and technology, and the human, capital, information, or other resources required to meet the performance goals;
- Establish performance indicators to be used in measuring or assessing the relevant outputs, service levels, and outcomes of each program activity;
- Provide a basis for comparing actual program results with the established performance goals; and
- Describe the means to be used to verify and validate measured values.

This CDP data collection supports the GPRAMA, which requires overall organization management to improve agency performance and achieve the mission and goals of the agency through the use of strategic and performance planning, measurement, analysis, regular assessment of progress, and use of performance information to improve the results achieved. Specifically, this

data collection will allow SAMHSA to have the capacity to report on a consistent set of performance measures across its various grant programs that conduct each of these activities.

SAMHSA's legislative mandate is to increase access to high quality substance abuse and mental health prevention and treatment services and to improve outcomes. Its mission is to reduce the impact of substance abuse and mental illness on America's communities. SAMHSA's vision is to provide leadership and devote its resources—programs, policies, information and data, contracts and grants—toward helping the Nation act on the knowledge that:

- Behavioral health is essential for health;
- Prevention works;
- Treatment is effective; and
- People recover from mental and substance use disorders.

In order to improve the lives of people within communities, SAMHSA has many roles:

- Providing Leadership and Voice by developing policies; convening stakeholders; collaborating with people in recovery and their families, providers, localities, Tribes, Territories, and States; collecting best practices and developing expertise around behavioral health services; advocating for the needs of persons with mental and substance use disorders; and emphasizing the importance of behavioral health in partnership with other agencies, systems, and the public.
- Promoting change through Funding and Service Capacity Development. Supporting States, Territories, and Tribes to build and improve basic and proven practices and system capacity; helping local governments, providers, communities, coalitions, schools, universities, and peer-run and other organizations to innovate and address emerging issues; building capacity across grantees; and strengthening States', Territories', Tribes', and communities' emergency response to disasters.
- Supporting the field with Information/Communications by conducting and sharing information from national surveys and surveillance (e.g., National Survey on Drug Use and Health [NSDUH], Drug Abuse Warning Network [DAWN], Behavioral Health Service Information System [BHSIS]); vetting and sharing information about evidence-based practices (e.g., National Registry of Evidence-based Programs and Practices [NREPP]); using the Web, print, social media, public appearances, and the press to reach the public, providers (e.g., primary, specialty, guilds, peers), and other stakeholders; and listening to and reflecting the voices of people in recovery and their families.
- Protecting and promoting behavioral health through Regulation and Standard Setting by preventing tobacco sales to minors (Synar Program); administering Federal drug-free workplace and drug-testing programs; overseeing opioid treatment programs and accreditation bodies; informing physicians' office-based opioid treatment prescribing practices; and partnering with other HHS agencies in regulation development and review.
- Improving Practice (i.e., community-based, primary care, and specialty care) by holding State, Territorial, and Tribal policy academies; providing technical assistance to States, Territories, Tribes, communities, grantees, providers, practitioners, and stakeholders; convening conferences to disseminate practice information and facilitate communication; providing guidance to the field; developing and disseminating evidence-based practices and successful frameworks for service provision; supporting innovation in evaluation and services research; moving innovations and evidence-based approaches to scale; and cooperating with international partners to identify promising approaches to supporting behavioral health.

Each of these roles complements SAMHSA's legislative mandate. All of SAMHSA's programs and activities are geared toward the achievement of its mission, and performance monitoring is a collaborative and cooperative aspect of this process. SAMHSA will strive to coordinate its efforts to further its mission with ongoing performance measurement development activities.

Reports, to be made available on the SAMHSA Web site and by request, will inform staff on the grantees' ability to serve their target populations and meet their client and budget targets. SAMHSA CDP data will also provide grantees with information that can guide modifications to their service array. Approval of this information collection will allow SAMHSA to continue to meet Government Performance and Results Act of 1993 (GPRA) reporting requirements that quantify the effects and accomplishments of its discretionary grant programs which are consistent with OMB guidance.

Based on current funding and planned fiscal year 2015 notice of funding announcements (NOFA), SAMHSA programs will use these measures in fiscal years 2015 through 2017.

CSAP will use CDP measures for the HIV Minority AIDS Initiative (MAI), Strategic Prevention Framework State Incentive Grants (SPF SIG), and Partnerships for Success (PFS).

CMHS will use the CDP measures to collect client-level data for the following programs: Comprehensive Community Mental Health Services for Children and their Families (CMHI); Healthy Transitions (HT); National Child Traumatic Stress Initiative (NCTSI) Community Treatment Centers; Mental Health Transformation State Incentive Grants (MH SIG); Minority AIDS/HIV Services Collaborative Program; Primary and Behavioral Health Care Integration (PBHCI); Services in Supportive Housing (SSH); Systems of Care (SoC); and Transforming Lives Through Supportive Employment. In addition, grantees in the PBHCI program will complete an additional data collection tool that is specific to their program.

CMHS programs that will use the CDP to collect grantee-level IPP indicators include: Advancing Wellness and Resiliency in Education (Project AWARE); Circles of Care; Comprehensive Community Mental Health Services for Children and their Families (CMHI); Garrett Lee Smith Campus Suicide Prevention Program; Garrett Lee Smith State/Tribal Suicide Prevention Program; Healthy Transitions Program; Linking Actions for Unmet Needs in Children's Mental Health (LAUNCH); National Suicide Prevention Lifeline; NCTSI Treatment and Service Centers; NCTSI Community Treatment Centers; NCTSI National Coordinating Center; Mental Health Transformation Grant Program; Minority AIDS/HIV Services Collaborative Program; Minority Fellowship Program; PBHCI; Safe Schools/Healthy Students; Services in Supportive Housing; State Mental Health Data Infrastructure Grants for Quality Improvement; Statewide Consumer Network Grants; Statewide Family Network Grants; Suicide Lifeline Crisis Center Follow Up; Systems of Care; Transforming Lives Through Supported Employment; Native Connections; Now is the Time: Minority Fellowship Program- Youth; Cooperative Agreements to Implement the National Strategy for Suicide Prevention, Historically Black Colleges and Universities Center for Excellence in Behavioral Health; and Statewide Peer Networks for Recovery and Resilience.

CSAT will use the CDP measures with the following programs: Assertive Adolescent and Family Treatment (AAFT); Access to Recovery 3 (ATR3); Adult Treatment Court Collaboratives (ATCC); Enhancing Adult Drug Court Services, Coordination and Treatment (EADCS); Offender Reentry Program

(ORP); Treatment Drug Court (TDC); Office of Juvenile Justice and Delinquency Prevention—Juvenile Drug Courts (OJJDP–JDC); Teen Court Program (TCP); HIV/AIDS Outreach Program; Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services (TCE–HIV); Addictions Treatment for the Homeless (AT–HM); Cooperative Agreements to Benefit Homeless Individuals (CABHI); Cooperative Agreements to Benefit Homeless Individuals—States (CABHI-States); Recovery-Oriented Systems of Care (ROSC); Targeted Capacity Expansion- Peer to Peer (TCE—PTP); Pregnant and Postpartum Women (PPW); Screening, Brief Intervention and Referral to Treatment (SBIRT); Targeted Capacity Expansion (TCE); Targeted Capacity Expansion- Health Information Technology (TCE–HIT); Targeted Capacity Expansion Technology Assisted Care (TCE–TAC); Addiction Technology Transfer Centers (ATTC); International Addiction Technology Transfer Centers (I–ATTC); State Adolescent Treatment Enhancement and Dissemination (SAT–ED); Grants to Expand Substance Abuse Treatment Capacity in Adult Tribal Healing to Wellness Courts and Juvenile Drug Courts; and Grants for the Benefit of Homeless Individuals—Services in Supportive Housing (GBHI).

SAMHSA will also use the CDP to collect CMHS client-level measures and IPP information from the HIV Continuum of Care program, which is funded by CSAP, CMHS, and CSAT.

SAMHSA uses performance measures to report on the performance of its discretionary services grant programs. The performance measures are used by individuals at three different levels: the SAMHSA administrator and staff, the Center administrators and government project officers, and grantees.

SAMHSA and its Centers will use the data for annual reporting required by GPRA, for grantee performance monitoring, for SAMHSA reports and presentations, and for analyses comparing baseline with discharge and follow-up data. GPRA requires that SAMHSA's report for each fiscal year include actual results of performance monitoring. The information collected through the CDP will allow SAMHSA to report on the results of these performance outcomes. Reporting will be consistent with specific SAMHSA performance domains to assess the accountability and performance of its discretionary grant programs.

ESTIMATES OF ANNUALIZED HOUR BURDEN—COMMON DATA PLATFORM CLIENT OUTCOME MEASURES FOR DISCRETIONARY PROGRAMS

SAMHSA program title	Number of respondents	Responses per respondent	Total number of responses	Burden hours per response	Total burden hours
HIV Continuum of Care (CSAP, CMHS, CSAT funding)—specific Form	200	2	400	0.67	268
Client-Level Services Forms					
CSAP:					
HIV-Minority AIDS Initiative (MAI)	18,041	4	72,164	0.38	27,422
SPF SIG/Community Level	122	4	488	0.38	185
SPF SIG/Program Level	510	4	2,040	0.38	775
PFS/Community Level	550	4	2,200	0.38	836
PFS/Program Level	111	4	444	0.38	169
CMHS:					
Comprehensive Community Mental Health Services for Children and their Families Program (CMHI)	3,431	2	6,862	0.45	3,088
HIV Continuum of Care (CoC)	1,500	2	3,000	0.45	1350
Healthy Transitions (HT)	1,600	2	3,200	0.45	1,440
NCTSI Community Treatment Centers (NCTSI)	1,856	1	1,856	0.45	835
Mental Health Transformation State Incentive Grant (MH SIG)	2,975	1	2,975	0.45	1,339
Minority AIDS/HIV Services Collaborative Program	2,844	2	5,688	0.45	2,560
Primary and Behavioral Health Care Integration (PBHCI)	14,000	2	28,000	0.50	14,000
Services in Supportive Housing (SSH)	4,975	2	9,950	0.45	4,478
Systems of Care (SoC)	1,164	1	1,164	0.45	524
Transforming Lives Through Supported Employment	1,500	2	3,000	0.45	1,350
CSAT:					
Assertive Adolescent and Family Treatment (AAFT)	303	3	909	0.47	427
Access to Recovery 3 (ATR3)	239,186	1	239,186	0.47	112,417
Adult Treatment Court Collaboratives (ATCC)	1,078	3	3,234	0.47	1,520
Enhancing Adult Drug Court Services, Coordination, and Treatment (EADCS CT)	4,664	3	13,992	0.47	6,576
Offender Reentry Program (ORP)	1,843	3	5,529	0.47	2,599
Treatment Drug Court (TDC)	5,996	3	17,988	0.47	8,454
Office of Juvenile Justice and Delinquency Prevention—Juvenile Drug Courts (OJJDP–JDC)	392	3	1,176	0.47	553
Teen Court Program (TCP)	5,996	3	17,988	0.47	8,454
HIV/AIDS Outreach Program (HIV-Outreach)	4,352	3	13,056	0.47	6,136
Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services (TCE–HIV)	4,885	3	14,655	0.47	6,888
Addictions Treatment for Homeless (AT–HM)	10,636	3	31,908	0.47	14,997
Cooperative Agreements to Benefit Homeless Individuals (CABHI)	2,702	3	8,106	0.47	3,810

ESTIMATES OF ANNUALIZED HOUR BURDEN—COMMON DATA PLATFORM CLIENT OUTCOME MEASURES FOR DISCRETIONARY PROGRAMS—Continued

SAMHSA program title	Number of respondents	Responses per respondent	Total number of responses	Burden hours per response	Total burden hours
Cooperative Agreements to Benefit Homeless Individuals—States (CABHI-States)	142	3	426	0.47	200
Recovery-Oriented Systems of Care (ROSC)	846	3	2,538	0.47	1,193
Targeted Capacity Expansion—Peer to Peer (TCE–PTP)	827	3	2,481	0.47	1,166
Pregnant and Postpartum Women (PPW)	1,719	3	5,157	0.47	2,424
Screening Brief Intervention Referral and Treatment* (SBIRT)	59,419	3	178,257	0.47	83,781
Targeted Capacity Expansion—Health Information Technology (TCE–HIT)	5,295	3	15,885	0.47	7,466
Targeted Capacity Expansion Technology Assisted Care (TCE–TAC)	346	3	1,038	0.47	488
Addiction Technology Transfer Centers (ATTC)	32,676	3	98,028	0.47	46,073
International Addiction Technology Transfer Centers (I–ATTC)	1,789	3	5,367	0.47	2,522
State Adolescent Treatment Enhancement and Dissemination (SAT–ED)	925	3	2,775	0.47	1,304
Grants to Expand Substance Abuse Treatment Capacity In Adult Tribal Healing to Wellness Courts and Juvenile Drug Courts	240	3	720	0.47	338
Grants for the Benefit of Homeless Individuals-Services in Supportive Housing (GBHI)	1,960	3	5,880	0.47	2,764
Total Services—Client Level Instruments	443,596		829,710		383,169
CMHS Infrastructure, Prevention, and Mental Health Promotion (IPP) Form:					
Project AWARE	120	4	480	2	960
Circles of Care	11	4	44	2	88
Comprehensive Community Mental Health Services for Children and their Families Program (CMHI)	69	4	276	2	552
Garrett Lee Smith Campus Suicide Prevention Grant Program	123	4	492	2	984
HIV Continuum of Care	33	4	132	2	264
Garrett Lee Smith State/Tribal Suicide Prevention Grant Program	102	4	408	2	816
Healthy Transitions (HT)	16	4	64	2	128
Historically Black Colleges and Universities Center for Excellence in Behavioral Health	1	4	4	2	8
Linking Actions for Unmet Needs in Children's Mental Health (LAUNCH)	54	4	216	2	432
National Suicide Prevention Lifeline	2	4	8	2	16
NCTSI Treatment & Service Centers	32	4	128	2	256
NCTSI Community Treatment Centers	81	4	324	2	648
NCTSI National Coordinating Center	2	4	8	2	16
Mental Health Transformation Grant	30	4	120	2	240
Minority AIDS/HIV Services Collaborative Program	17	4	68	2	136
Minority Fellowship Program	9	4	36	2	72
Primary and Behavioral Health Care Integration	70	4	280	2	560
Safe Schools/Healthy Students Initiative	7	4	28	2	56
Services in Supportive Housing	5	4	20	2	40
State Mental Health Data Infrastructure Grants for Quality Improvement	2	4	8	2	16
Statewide Consumer Network Grants	42	4	168	2	336
Statewide Family Network Grants	53	4	212	2	424
Suicide Lifeline Crisis Center FUP Grants	27	4	108	2	216
Systems of Care	31	4	124	2	248
Transforming Lives Through Supported Employment	6	4	24	2	48
Native Connections	20	4	80	2	160
Now Is the Time: Minority Fellowship Program-Youth	5	4	20	2	40
Cooperative Agreements to Implement the National Strategy for Suicide Prevention	4	4	16	2	32
Statewide Peer Networks for Recovery and Resiliency	8	4	32	2	64
Total IPP	982		3,928		7,856
CSAP Aggregate Tool:					
Adult Treatment Court Collaborative (ATCC)	6	4	24	.25	6

ESTIMATES OF ANNUALIZED HOUR BURDEN—COMMON DATA PLATFORM CLIENT OUTCOME MEASURES FOR DISCRETIONARY PROGRAMS—Continued

SAMHSA program title	Number of respondents	Responses per respondent	Total number of responses	Burden hours per response	Total burden hours
Total SAMHSA	444,584		833,662		389,901

Notes:
1. Screening, Brief Intervention, Treatment and Referral (SBIRT) grant program: The estimated number of respondents is 10% of the total respondents, 742,740.
2. Numbers may not add to the totals due to rounding.

Written comments and recommendations concerning the proposed information collection should be sent by November 3, 2014 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,
Statistician.

[FR Doc. 2014–23455 Filed 10–1–14; 8:45 am]
BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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.

Proposed Project: National System of Care Expansion Evaluation—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS) is requesting approval from the Office of Management and Budget (OMB) for the new collection of data for the National System of Care (SOC) Expansion Evaluation.

Evaluation Plan and Data Collection Activities. The purpose of the National SOC Expansion Evaluation is to assess the success of the SOC expansion planning and implementation grants in expanding the reach of SOC values, principles, and practices. These include maximizing system-level coordination and planning, offering a comprehensive array of services, and prioritizing family and youth involvement. In order to obtain a clear picture of SOC expansion grant activities, this longitudinal, multi-level evaluation will measure activities and performance of grantees at three levels essential to building and sustaining effective SOCs. The three levels are: jurisdiction, local system, and child and family levels.

Data collection activities will occur through four evaluation components. Each component includes data collection activities and analyses involving similar topics. Each component has multiple instruments that will be used to address various aspects. Thus, there are a total of eight new instruments that will be used to conduct this evaluation. All four evaluation components involve collecting data from implementation grantees, but only the Implementation assessment includes data collection from planning grantees as well.

The four studies with their corresponding data collection activities are as follows:

(1) The Implementation assessment will document the development and expansion of SOCs. Data collection activities include: (a) Stakeholder Interviews with high-level administrators, youth and family representatives, and child agencies to describe the early implementation and expansion efforts of planning and implementation grants, (b) the web-based Self-Assessment of Implementation Survey to assess SOC implementation and expansion at the jurisdictional level over time, and (c) the SOC Expansion Assessment (SOCEA) administered to local providers, managers, clients, and their caregivers to measure SOC expansion strategies and processes implemented related to direct service delivery at the local system level. Implementation grantees will participate in all three of the Implementation assessment data collection activities. Planning grantee participation will be limited to the Stakeholder Interview and the Self-Assessment of Implementation Survey.

(2) The Network Analysis will use Network Analysis Surveys to determine the depth and breadth of the SOC collaboration across agencies and organization. Separate network analysis surveys will be administered at the jurisdiction and local service system levels. The Geographic Information System (GIS) Component will measure the geographic coverage and spread of the SOC, including reaching underserved areas and populations. At the jurisdictional and local service system levels, the GIS component will use office and business addresses of attendees to key planning, implementation and expansion events. At the child/youth and family level, Census block groups (derived from home addresses) will be used to depict the geographic spread of populations served by SOCs.

(3) The Financial Mapping Component involves the review of implementation grantees' progress in developing financial sustainability and expansion plans. The Financial Mapping Interview will be conducted with financial administrators of Medicaid Agencies, Mental Health Authorities, mental health provider trade associations, and family organizations. The Benchmark Component will compare relative rates of access, utilization, and costs for children's mental health services using the Benchmarking Tool and administrative data requested from financial administrators and personnel working with Medicaid Agency and Mental Health Authority reporting and payment systems.

(4) The Child and Family Outcome Component will collect longitudinal data on child clinical and functional outcomes, family outcomes, and child and family background. Data will be collected at intake, 6-months, and 12-months post service entry (as long as the child/youth is still receiving services). Data will also be collected at discharge if the child/youth leaves services before the 12-month data collection point. Data will be collected using the following scales: (a) A shortened version of the Caregiver Strain Questionnaire, (b) the Columbia Impairment Scale, (c) the Pediatric Symptom Checklist-17, (d) Family/Living Situation items, and (e) background information gathered through the Common Data Platform (CDP). Although OMB approval for the CPD has been sought separately under an unrelated contract, this data collection will include both youth age 11 to 17 and their caregivers whereas CDP includes only one of these respondents (i.e., youth or caregiver).

Estimated Burden. Data will be collected from approximately 56 planning and 107 implementation grants, 214 local systems within the implementation grant jurisdictions. Data collection for this evaluation will be conducted over a 4-year period.

The average annual respondent burden estimate reflects the average number of respondents in each respondent category, the average number of responses per respondent per year, the average length of time it will take to complete each response, and the total average annual burden for each category of respondent for all categories of respondents combined. Table 1 shows the estimated annual burden estimate by instrument and respondent. Burden is summarized in Table 2.

TABLE 1—ESTIMATED AVERAGE ANNUAL BURDEN

Instrument/ data collection activity	Respondent	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total annual burden hours
Implementation Assessment						
Stakeholder Interview [a]	Project Director	54	1	54	1.3	72
	Family Organization Representative	54	1	54	1.3	72
	Youth Organization Representative	54	1	54	1.2	64
	Core Agency Partners [b]	272	1	272	1.0	272
SAIS [a]	Grant leadership	815	1.89	1,540	0.82	1,258
SOCEA	Project Director & Representatives from Family & Youth Organizations.	214	1	290	1.5	435
	Core Agency Rep, Service Providers	870	1	870	1	1,077
	Care Coordinators	193	1	193	1.7	329
	Caregivers	193	1	193	0.75	214
	Clients 11–21	193	1	193	0.5	97
Network Analysis Survey						
Jurisdiction	Grant leadership	357	1	357	0.4	149
Local system	Local providers of direct services	713	1	713	0.4	297
GIS Component: Group Collaborative Events for GIS Analysis Form						
Jurisdiction	Grant administrator/Project Director	107	4	428	0.25	107
Local system	Local administrator/Project Director	214	4	856	0.25	214
Financial Mapping and Benchmark Components						
Financial Mapping Interview.	Financial administrators at: Medicaid Agencies & MH Authorities.	99	1	99	2.0	221
	Financial administrators at: Trade associations & Family organizations.	33	1	33	1.5	53
Benchmark Tool	Payment/reporting personnel at: Medicaid Agencies & MH Authorities	24	1	24	40.0	960
Child and Family Outcome Component						
Background Information (CDP) [c].	Caregivers of clients age 11–17 [d]	1,283	[e] 2.12	2,720	0.37	998
	Clients age 11–17	1,283	2.12	2,720	0.37	998
Family/Living Information	Caregivers of clients age 5–17 [f]	6,454	2.12	13,683	.05	684
	Clients age 18–21 [g]	1,322	2.12	2,802	.05	140
Caregiver Strain Questionnaire—Short Form.	Caregivers of clients age 5–17	6,454	2.12	13,683	0.12	1,642
Columbia Impairment Scale.	Caregivers of clients age 5–17	6,454	2.12	13,683	0.08	1,095

TABLE 1—ESTIMATED AVERAGE ANNUAL BURDEN—Continued

Instrument/ data collection activity	Respondent	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total annual burden hours
	Clients age 11–21 [h]	3,888	2.12	8,243	0.08	659
Pediatric Symptom Checklist—17.	Caregivers of clients age 5–17	6,454	2.12	13,683	0.05	684
	Clients age 11–21	3,888	2.12	8,243	0.05	412
Client record review	Site staff	56	407	22,794	0.21	4,787
Total Annual Burden						
All	All	14,423		108,477		17,989

[a] Burden includes planning and implementation grantees.
[b] Core agency partners include (1) representatives from MH, child welfare, and juvenile justice and (2) CMHI quality monitors.
[c] OMB clearance sought for CDP is limited to the added burden for a second respondent (Caregiver *OR* Client age 11 to 17). For clients age 11 to 17, CDP only collects information from *either* Caregivers *OR* youth. In addition, clearance is requested for the burden only as OMB approval of CDP has been sought separately.
[d] Assumes 33% of clients will be age 11 to 17 and that the additional CDP interview for clients age 11 to 17 and their caregiver will be evenly split between clients and caregivers. Evaluation design requires all participating clients age 5 to 17 to have a caregiver participating in the evaluation.
[e] Accounts for attrition.
[f] Assumes 83% of clients will be age 5 to 17.
[g] Assumes 17% of clients will be age 18 to 21.
[h] Assumes 50% of clients will be age 11 to 21.

TABLE 2—TOTAL ESTIMATED ANNUAL BURDEN

Instrument/data collection activity	Number of respondents	Total number of responses	Average annual burden (hours)
Stakeholder Interview	435	435	479
SAIS	815	1,540	1,258
SOCEA	1,284	1,740	2,151
Network analysis survey	1,070	1,070	446
GIS	321	1,284	321
Financial mapping interview	132	132	274
Benchmark Tool	24	24	960
Child and family tools (respondent & staff burden)	10,342	102,253	12,100
Total	14,423	108,477	17,989

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 or email her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received by December 1, 2014.

Summer King,

Statistician.

[FR Doc. 2014–23454 Filed 10–1–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2014–0046]

Agency Information Collection Activities: DHS OIG Audit of FEMA's Assistance to Firefighters Grant Program, DHS Form 530, DHS Form 531, DHS Form 532

AGENCY: Office of Inspector General, Office of Audits, DHS.

ACTION: 60-day notice and request for comments; new collection, 1601—NEW.

SUMMARY: The Department of Homeland Security, Office of Inspector General, Office of Audits, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until December 1, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: You may submit comments, identified by docket number DHS–2014–0046, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Email: dhs.pra@hq.dhs.gov.* Please include docket number DHS–2014–0046 in the subject line of the message.

SUPPLEMENTARY INFORMATION: This information collection is mandatory for grantees selected in a random sample of fiscal year 2010 to fiscal year 2012 Assistance to Firefighter (AFG) grants and Staffing for Adequate Fire and Emergency Response (SAFER) grants.

The Department of Homeland Security's (DHS) Office of Inspector General (OIG) is conducting an audit to determine whether the Federal

Emergency Management Agency's (FEMA) oversight and monitoring of Assistance to Firefighter Grant Program recipients ensures that grantees comply with grant requirements and guidance precluding waste, fraud, and abuse of grant funds.

The DHS OIG will use the data collected to determine whether FEMA's current monitoring and grant management efforts comply with Federal regulations, as well as FEMA's Assistance to Firefighter Grant Program requirements. The DHS OIG will make recommendations to FEMA to address any programmatic challenges identified during the audit.

The *Inspector General Act of 1978,* as amended, stipulates that Inspectors General conduct and supervise audits to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action. In addition, as such, they have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that relate to programs and operations with respect to which that Inspector General has responsibilities under this Act.

Additionally, financial and programmatic monitoring requirements are set forth in 44 CFR Part 13, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government* or 2 CFR Part 215, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.* Per FEMA grant guidance and grant award letters, grant recipients are required to conform to either 44 CFR Part 13 or 2 CFR Part 215. Both regulations stipulate that records must be retained for three years after submission of the final expenditure report for the grant.

Finally, both 44 CFR Part 13.43 and 2 CFR Part 215.53 provide the Inspector General the right of timely and unrestricted access to any records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. The collection information will be used by the DHS OIG to conduct an audit of FEMA's oversight and management of the Assistance to Firefighters Grant Program—specifically the Assistance to Firefighters (AFG) and Staffing for Adequate Fire and Emergency Response (SAFER) sub-programs. This information will be used to respond to the audit's objective, which is to determine the extent to which Assistance to Firefighter grant recipients comply with grant requirements and guidance precluding waste, fraud, and abuse of grant funds.

The information will be requested in an email sent to each grantee's point of contact information in FEMA's eGrant database. DHS Forms 530, 531, and 532 detail the information being collected from each grantee. Each attachment is specific to the type of grant awarded. The email will have one attachment specific to the grant awarded.

A cover email (Grantee Email from OIG) provides guidance for submitting the requested information.

Once the information is collected from the grantee, the DHS OIG will analyze this information based on established criteria to determine if grantees complied with these criteria to preclude waste, fraud, and abuse of grant funds. The information will also be used to determine if FEMA provided adequate oversight and monitoring of these grant programs.

This results of this analysis will be presented in two audit reports—one for AFG grants and one for SAFER grants. These reports will include recommendations to FEMA based on the results of the analysis.

The preferred submission method for collection of this information will be via electronic mail. However, regular mail options for hard copies or scanned copies on electronic media will be available should the grantee not have access to the internet.

An email will be sent to the grantee with the appropriate form for the type of grant attached. The email (Grantee Email from OIG) provides guidance to the grantee on how to respond to this request.

A specific form will be sent for each the three types of grants in the sample—AFG (DHS Form 532), SAFER Hiring (DHS Form 530), or SAFER Recruitment and Retention (DHS Form 531). Each form has questions and document requests specific to that type of grant.

Each form requests documents that may be available on the internet. If information is available on the internet (for example, grantee procurement policies) and the grantee provides this location of this information, the DHS OIG will download this information from the Web site.

The burden has been reduced on the grantee because the DHS OIG is only requesting information the grantee is required to retain and does not normally submit to FEMA including items such as invoices for items/services purchased, written procurement policies and proof of payment to vendors for items/services purchased.

Grantees are required to maintain grant records for three years after the submission of their final expenditure report. It is estimated that no more than 28 respondents (five percent) will mail their records to the DHS Office of Inspector General. The cost to mail a five pound box of records to the Office of Inspector General's Denver Field Office using the United States Postal Service's Standard Post is $14.33. The estimated total annual cost burden is $401.24.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Office of Inspector General, Office of Audits, DHS.

Title: DHS OIG Audit of FEMA's Assistance to Firefighters Grant Program.

OMB Number: 1601–NEW.

Frequency: State, Local, or Tribal Government.

Affected Public: State, Local, or Tribal Government.

Number of Respondents: 556.

Estimated Time per Respondent: 2 hours.

Total Burden Hours: 1112.

Estimated Annual Cost: $401.24.

Dated: September 22, 2104.

Margaret H. Graves,

Deputy Chief Information Officer.

[FR Doc. 2014–23513 Filed 10–1–14; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

[OMB Control No. 1653–0049]

Agency Information Collection Activities: Comment Request

ACTION: 30-day notice of information collection for review; Suspicious/Criminal Activity Tip Reporting.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. The information collection was previously published in the **Federal Register** on July 30, 2014, Vol. 79 No. 17964 allowing for a 60 day comment period. USICE received no comments during this period. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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 agencies 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 of a currently approved information collection.

(2) *Title of the Form/Collection:* Suspicious/Criminal Activity Tip Reporting.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households, Business or other non-profit. DHS/ICE maintains multiple tools for tip reporting to allow the public and law enforcement partners to report tip information regarding crimes within the jurisdiction of DHS.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Number of respondents	Form name	Average burden per response (in hours)
66,000	Homeland Security Investigations Tip Form	0.16
20	Bulk Cash Smuggling Center Contact Form	0.16
118,000	Suspicious Activity Tip Line	0.10

(6) *An estimate of the total public burden (in hours) associated with the collection:* 22,363 annual burden hours.

Dated: September 29, 2014.

Scott Elmore,

Program Manager, Forms Management Office, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2014–23458 Filed 10–1–14; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5810–N–01]

Notice of Certain Operating Cost Adjustment Factors for 2015

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice establishes operating cost adjustment factors (OCAFs) for project based assistance contracts for eligible multifamily housing projects having an anniversary date on or after February 11, 2015. OCAFs are annual factors used to adjust Section 8 rents renewed under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA).

DATES: *Effective Date:* February 11, 2015.

FOR FURTHER INFORMATION CONTACT: Stan Houle, Housing Program Manager, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; telephone number 202–402–2572 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. OCAFs

Section 514(e)(2) of MAHRA (42 U.S.C. 1437f note) requires HUD to establish guidelines for rent adjustments based on an OCAF. The statute requiring HUD to establish OCAFs for Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA) (12 U.S.C. 4101, *et seq.*) projects and projects with contract renewals or adjustments under section 524(b)(1)(A) of MAHRA is similar in wording and intent. HUD has therefore developed a single factor to be applied uniformly to all projects utilizing OCAFs as the method by which renewal rents are established or adjusted.

LIHPRHA projects are low-income housing projects insured by the Federal Housing Administration (FHA). LIHPRHA projects are primarily low-

income housing projects insured under section 221(d)(3) below-market interest rate (BMIR) and section 236 of the National Housing Act, respectively. Both categories of projects have low-income use restrictions that have been extended beyond the 20-year period specified in the original documents, and both categories of projects also receive assistance under section 8 of the U.S. Housing Act of 1937 to support the continued low-income use.

MAHRA gives HUD broad discretion in setting OCAFs, referring, for example, in sections 524(a)(4)(C)(i), 524(b)(1)(A), 524(b)(3)(A) and 524(c)(1) simply to ''an operating cost adjustment factor established by the Secretary.'' The sole limitation to this grant of authority is a specific requirement in each of the foregoing provisions that application of an OCAF ''shall not result in a negative adjustment.'' Contract rents are adjusted by applying the OCAF to that portion of the rent attributable to operating expenses exclusive of debt service.

The OCAFs provided in this notice and applicable to eligible projects having a project based assistance contracts anniversary date of on or after February 11, 2015, are calculated using the same method as those published in HUD's 2014 OCAF notice published on September 16, 2013 (78 FR 56911). Specifically, OCAFs are calculated as the sum of weighted average cost changes for wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water/sewer/trash using publicly available indices. The weights used in the OCAF calculations for each of the nine cost component groupings are set using current percentages attributable to each of the nine expense categories. These weights are calculated in the same manner as in HUD's September 16, 2013, notice. Average expense proportions were calculated using three years of audited Annual Financial Statements from projects covered by OCAFs. The expenditure percentages for these nine categories have been found to be very stable over time, but using three years of data increases their stability. The nine cost component weights were calculated at the state level, which is the lowest level of geographical aggregation with enough projects to permit statistical analysis. These data were not available for the Western Pacific Islands, so data for Hawaii were used as the best available indicator of OCAFs for these areas.

The best current price data sources for the nine cost categories were used in calculating annual change factors. State-level data for fuel oil, electricity, and natural gas from Department of Energy surveys are relatively current and continue to be used. Data on changes in employee benefits, insurance, property taxes, and water/sewer/trash costs are only available at the national level. The data sources for the nine cost indicators selected used were as follows:

- *Labor Costs:* First quarter, 2014 Bureau of Labor Statistics (BLS) ECI, Private Industry Wages and Salaries, All Workers (Series ID CIU2020000000000I) at the national level and Private Industry Benefits, All Workers (Series ID CIU2030000000000I) at the national level.
- *Property Taxes:* Census Quarterly Summary of State and Local Government Tax Revenue—Table 1 *http://www2.census.gov/govs/qtax/2014/q1t1.xls.* 12-month property taxes are computed as the total of four quarters of tax receipts for the period from April through March. Total 12-month taxes are then divided by the number of occupied housing units to arrive at average 12-month tax per housing unit. The number of occupied housing units is taken from the estimates program at the Bureau of the Census. *http://www.census.gov/housing/hvs/data/histtab8.xls.*
- *Goods, Supplies, Equipment:* May 2013 to May 2014 Bureau of Labor Statistics (BLS) Consumer Price Index, All Items Less Food, Energy and Shelter (Series ID CUUR0000SA0L12E) at the national level.
- *Insurance:* May 2013 to May 2014 Bureau of Labor Statistic (BLS) Consumer Price Index, Tenants and Household Insurance Index (Series ID CUUR0000SEHD) at the national level.
- *Fuel Oil:* October 2013–March 2014 U.S. Weekly Heating Oil and Propane Prices report. Average weekly residential heating oil prices in cents per gallon excluding taxes for the period from October 7, 2013 through March 17, 2014 are compared to the average from October 1, 2012 through March 18, 2013. For the States with insufficient fuel oil consumption to have separate estimates, the relevant regional Petroleum Administration for Defense Districts (PADD) change between these two periods is used; if there is no regional PADD estimate, the U.S. change between these two periods is used. *http://www.eia.gov/dnav/pet/pet_pri_wfr_a_EPD2F_prs_dpgal_w.htm.*
- *Electricity:* Energy Information Agency, February 2014 ''Electric Power Monthly'' report, Table 5.6.B. *http://www.eia.gov/electricity/monthly/current_year/february2014.pdf.*
- *Natural Gas:* Energy Information Agency, Natural Gas, Residential Energy Price, 2012–2013 annual prices in dollars per 1,000 cubic feet at the state level. Due to EIA data quality standards several states were missing data for one or two months in 2013; in these cases, data for these missing months were estimated using data from the surrounding months in 2013 and the relationship between that same month and the surrounding months in 2012. *http://www.eia.gov/dnav/ng/ng_pri_sum_a_EPG0_PRS_DMcf_a.htm.*
- *Water and Sewer:* May 2013 to May 2014 Consumer Price Index, All Urban Consumers, Water and Sewer and Trash Collection Services (Series ID CUUR0000SEHG) at the national level.

The sum of the nine cost component percentage weights equals 100 percent of operating costs for purposes of OCAF calculations. To calculate the OCAFs, state-level cost component weights developed from AFS data are multiplied by the selected inflation factors. For instance, if wages in Virginia comprised 50 percent of total operating cost expenses and increased by 4 percent from 2013 to 2014, the wage increase component of the Virginia OCAF for 2015 would be 2.0 percent (50% * 4%). This 2.0 percent would then be added to the increases for the other eight expense categories to calculate the 2015 OCAF for Virginia. The OCAFs for 2015 are included as an Appendix to this Notice.

II. MAHRA and LIHPRHA OCAF Procedures

MAHRA, as amended, created the Mark-to-Market Program to reduce the cost of federal housing assistance, enhance HUD's administration of such assistance, and ensure the continued affordability of units in certain multifamily housing projects. Section 524 of MAHRA authorizes renewal of Section 8 project-based assistance contracts for projects without restructuring plans under the Mark-to-Market Program, including projects that are not eligible for a restructuring plan and those for which the owner does not request such a plan. Renewals must be at rents not exceeding comparable market rents except for certain projects. As an example, for Section 8 Moderate Rehabilitation projects, other than single room occupancy projects (SROs) under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), that are eligible for renewal under section 524(b)(3) of MAHRA, the renewal rents are required to be set at the lesser of: (1) The existing rents under the expiring contract, as adjusted by the OCAF; (2) fair market rents (less any amounts allowed for tenant-purchased utilities); or (3) comparable market rents for the market area.

LIHPRHA (see, in particular, section 222(a)(2)(G)(i), 12 U.S.C. 4112 (a)(2)(G) and HUD's regulations at 24 CFR 248.145(a)(9)) requires that future rent adjustments for LIHPRHA projects be made by applying an annual factor, to be determined by HUD to the portion of project rent attributable to operating expenses for the project and, where the owner is a priority purchaser, to the portion of project rent attributable to project oversight costs.

III. Findings and Certifications

Environmental Impact

This issuance sets forth rate determinations and related external administrative requirements and procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.187.

Paperwork Reduction Act

This notice reduces information collection requirements already submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Dated: September 26, 2014.

Carol J. Galante,

Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix

OPERATING COST ADJUSTMENT FACTORS FOR 2015

Alabama	1.9
Alaska	2.2
Arizona	2.0
Arkansas	1.9
California	2.6
Colorado	2.0
Connecticut	1.7
Delaware	1.5
District of Columbia	2.3
Florida	2.2
Georgia	2.0
Hawaii	1.5
Idaho	2.5

OPERATING COST ADJUSTMENT FACTORS FOR 2015—Continued

Illinois	1.7
Indiana	2.1
Iowa	2.1
Kansas	2.2
Kentucky	2.1
Louisiana	2.7
Maine	1.8
Maryland	2.1
Massachusetts	2.4
Michigan	1.4
Minnesota	2.4
Mississippi	2.4
Missouri	2.0
Montana	2.2
Nebraska	2.1
Nevada	2.0
New Hampshire	2.2
New Jersey	2.0
New Mexico	2.4
New York	2.2
North Carolina	2.0
North Dakota	2.0
Ohio	2.0
Oklahoma	1.8
Oregon	2.2
Pacific Islands	1.5
Pennsylvania	2.0
Puerto Rico	2.0
Rhode Island	2.7
South Carolina	2.2
South Dakota	2.0
Tennessee	2.0
Texas	2.4
Utah	2.2
Vermont	2.0
Virgin Islands	2.4
Virginia	1.8
Washington	2.2
West Virginia	1.6
Wisconsin	2.1
Wyoming	2.1
US Average	2.1

[FR Doc. 2014–23475 Filed 10–1–14; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–457 (Review)]

Certain Tow-Behind Lawn Groomers and Parts Thereof From China

AGENCY: United States International Trade Commission.

ACTION: Notice of termination of five-year review.

SUMMARY: The Commission instituted the subject five-year review in July 2014 to determine whether revocation of the countervailing duty order on certain tow-behind lawn groomers and parts thereof from China would be likely to lead to continuation or recurrence of material injury (79 FR 37349). On September 23, 2014, the Department of Commerce published notice that it was revoking the order effective September 23, 2014, ''{b}ecause the domestic interested parties did not participate in this sunset review . . .'' (79 FR 56769). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

DATES: *Effective Date:* September 24, 2014.

FOR FURTHER INFORMATION CONTACT: Angela M.W. Newell (202–708–5409), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: September 29, 2014.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–23460 Filed 10–1–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 14–01]

The Medicine Shoppe; Decision and Order

On March 24, 2014, Administrative Law Judge Gail A. Randall issued the attached Recommended Decision. Respondent filed Exceptions to the Recommended Decision.

Having reviewed the entire record including Respondent's Exceptions, I have decided to adopt the ALJ's findings of fact, conclusions of law, and recommended order. A discussion of Respondent's Exceptions follows.

Respondent's Exceptions

Respondent raises twelve different exceptions to the ALJ's decision in no logical order. His contentions can be summarized as follows:

(1) That the ALJ failed to consider less punitive sanctions than revocation;

(2) that the ALJ improperly rejected his evidence of remedial measures by requiring him to produce corroborating evidence because she failed to rule on the Government's motion *in limine* and never granted him permission to introduce such evidence;

(3) that the ALJ ''imposed an undefined and vague standard of proof'' on the issue of his remedial measures because she rejected his testimony in the absence of corroborating evidence;

(4) that the ALJ improperly relied on the testimony of the Government's Expert for various reasons and thus made multiple findings which are unsupported by substantial evidence (exceptions 4–6, 8);

(5) that the ALJ's application of the public interest factors is unsupported by substantial evidence and is arbitrary and capricious;

(5) that the ALJ's findings of fact and conclusions of law regarding Respondent's employment of a convicted drug felon are unsupported by substantial evidence;

(6) that the ALJ's findings of fact and conclusions of law regarding Respondent's recordkeeping deficiencies are unsupported by substantial evidence;

(7) that the ALJ's findings of fact and conclusions of law regarding Respondent's audit and inventory deficiencies are unsupported by substantial evidence; and

(8) that his acceptance of responsibility and evidence of remedial measures renders his continued registration consistent with the public interest.

Resp. Exceptions, at 5–26.

Notwithstanding the order in which Respondent presents his exceptions, I first address his challenges that the ALJ's findings of various violations are unsupported by substantial evidence.

Challenges to the Substantiality of the Evidence

At the hearing, the Government alleged that Respondent (through its pharmacists) violated its corresponding responsibility under the Controlled Substances Act (CSA) by dispensing prescriptions that lacked a legitimate medical purpose, *see* 21 CFR 1306.04(a), as well as prescriptions that did not comply with 21 CFR 1306.05(a) because they were missing required information such as addresses and/or were not signed by the prescribing practitioner. As support for the allegations, the Government introduced several hundred controlled substance prescriptions, and elicited the testimony of an Expert witness in pharmacy practice.

Respondent asserts that the Government's Expert was not competent to testify as an Expert because, while she teaches a class in pharmacy law, ''on cross-examination . . . she could [not] name the federal and state statutes that govern the standards she applied when rendering her expert opinion.'' Exceptions, at 13. Respondent contends that ''[t]hese are of course the Federal Controlled Substances Act and the Texas Controlled Substances Act found in the Texas Health & Safety Code'' and that ''[i]t defies logic how [she] could be legitimately regarded as an expert in the field of pharmacy law and retail pharmacy.'' *Id.*

It is true that the Expert stated that ''I can't answer that'' when asked what the federal and state statutes were called. However, she then testified that ''It's just federal law and Texas law that we use to apply. For the exact statute or standard number and heading, I cannot recall.'' Tr. 71. And on further questioning, the Expert explained that ''we don't teach the numbers. If you ask most pharmacists, I don't think that they would be able to tell you the statute or the standard number, but they would be able to recite the law to you and how it is applied to pharmacy practice.'' *Id.* Thus, read in its entirety, the transcript shows that the Expert interpreted the question as asking for the specific section numbers of the relevant provisions of the CSA and State law, and not for the name of the respective statutes.

Moreover, Respondent does not identify any testimony on the part of the Expert which is inconsistent with the decisional law of either the courts or this Agency. I thus reject Respondent's Exception (Number Five) that the Government's Expert was not qualified to testify as an Expert in pharmacy law and practice.[1]

Respondent also takes exception to the ALJ's reliance on the Expert's testimony when she found that Respondent violated its corresponding responsibility when it failed to verify the validity of 154 prescriptions it dispensed which presented red flags. Exceptions, at 11–12. According to Respondent, the ALJ should have rejected the Expert's testimony because during cross-examination, it was established that she was provided with ''photocopies of one side of the prescriptions, instead of both sides which included the data she claimed was missing.'' Exceptions, at 12. Moreover, Respondent contends that included in the exhibits was a spreadsheet which listed ''the prescriptions and a description of what finding its expert was to make regarding each prescription.'' *Id.* Respondent then argues that the Expert ''testified she never asked for any other information about the prescriptions and simply endorsed the findings provided to her by the Government'' while its owner ''testified to the resolution of those 'red flags' but his testimony was INEXPLICABLY rejected in favor of [that of] the Government's expert.'' *Id.*

No citations to the record are provided to support Respondent's assertions that the Expert was provided with only one side of the prescriptions. Indeed, the prescriptions submitted for the record include a photocopy of the front of the prescription and the back on which the dispensing labels were placed. *See* Tr. 72–73 (Expert's testimony that the second page of the prescription ''was provided with all of the prescriptions.''). Thus, Respondent's assertion is a blatant mischaracterization of the record.

Nor is there any evidence to support the contention that the Expert ''simply endorsed the findings provided to her by the Government'' on a spreadsheet. Here again, there is no reference to this in the transcript, and even assuming that there was such a spreadsheet, the Expert fully explained the basis for her conclusions as to why the prescriptions she was asked about raised various red flags. These included that: (1) The patient's address was missing on some 169 prescriptions; (2) 98 prescriptions contained a stamped signature rather than the prescriber's actual signature; (3) the prescribers' DEA numbers were missing or incorrect on 33 prescriptions; (4) the name of the physician on the label was different from the name of the actual prescriber on 157 of the prescriptions; (5) several doctors were prescribing drug cocktails of narcotic and benzodiazepines; (6) a patient was prescribed a narcotic cough syrup in an amount that far exceeded the quantity ordinarily prescribed in the course of legitimate medical treatment; (7) some patients filled prescriptions for duplicative narcotics such as

[1] Respondent also contends that the ALJ overlooked the Expert's testimony that: she ''is only a fill-in part-time pharmacy at Walgreens and rarely works at the VA so she has no real applicable experience to assist the ALJ in understanding whether or not Respondent's errors were to such a degree as to support the decision that its continued registration is inconsistent with the public interest and should therefore be revoked.''

Exceptions, at 13. Respondent does not, however, cite to where in the transcript the quoted testimony occurred, and while the Expert acknowledged that she works as a relief pharmacist, at no point did she testify that ''she has no real applicable experience to assist the ALJ in understanding whether . . . Respondent errors were to such a degree as to support'' the ALJ's ultimate conclusion of law. I thus reject this contention.

hydrocodone tablets and hydrocodone cough syrup; (8) some patients only filled narcotic prescriptions and not their prescriptions for non-controlled drugs; (9) at least 22 times, Respondent returned the original prescription to a patient notwithstanding that it had filled the controlled substances and typically made no marking as to what it had filled on the returned prescription; (10) Respondent disregard physician's instructions to either fill all the prescriptions or none of them; (11) Respondent filled prescriptions in which the number of refills was left blank; and (12) and in five instances, the prescriptions had not been signed by the prescriber. R.D. at 10–12.

The Government's Expert further testified that it is the usual custom in pharmacy practice for a pharmacist to document his/her attempts to resolve red flags on the face of the prescription. Tr. 33. However, the Expert found no evidence that this occurred with respect to any of these prescriptions. *Id.*

In his sixth exception, Respondent contends that the ALJ's recommended sanction of revocation is arbitrary and capricious because it is ''unsupported by substantial evidence of egregious and intentional diversion.'' Resp. Exceptions, at 13–14. Putting aside for the moment whether this is so, Respondent correctly notes that this Agency considers the egregiousness and degree of culpability of a Registrant's misconduct in making the public interest determination. However, this Agency has long held that ''[j]ust because misconduct is unintentional, innocent, or devoid of improper motivation, [this] does not preclude revocation or denial. Careless or negligent handling of controlled substances creates the opportunity for diversion and [can] justify revocation or denial.'' *Paul J. Caragine, Jr.,* 63 FR 51592, 51601 (1998).

In any event, there is ample evidence of egregious misconduct including evidence that supports the inference that Respondent engaged in the intentional or knowing diversion of controlled substances. Here, the evidence shows that the Government conducted an audit of Respondent's handling of controlled substances which revealed massive shortages of multiple controlled substances. More specifically, the Government's audit, which covered slightly more than a one-year period, showed that Respondent had a shortage of 27,334 milliliters (929 ounces) of promethazine with codeine cough syrup (a schedule V drug); a shortage of 3,445 hydrocodone 10mg tablets (a schedule III drug), and shortages of 43,359 alprazolam 1mg and 7,769 alprazolam 2mg tablets (schedule IV).[2] Tr. 138–40; GX 13.

These shortages are extraordinary and support a finding of massive and egregious recordkeeping failures on Respondent's part. This alone supports a finding that Respondent violated the Controlled Substances Act, which requires the maintenance of ''complete and accurate'' inventories, as well as a ''complete and accurate record of each substance . . . received, sold, delivered or otherwise disposed of.'' 21 U.S.C. 827(a). And while later in his Exceptions, Respondent takes issue with the ALJ's findings regarding the audit, arguing that ''[t]he ALJ presumes these audit results are the correct and final tallies,'' Exceptions, at 24; notably, Respondent put forward no evidence that calls into question the validity of the audit's findings.

Moreover, the quantities involved support the inference that Respondent was engaged in the intentional diversion of controlled substances, given that it has put forward no evidence to provide a plausible explanation for the shortages.[3] And even if the Government proved no other violations, ''the audit results alone are sufficient to satisfy the Government's *prima facie* burden of establishing that Respondent's registration would be 'inconsistent with the public interest.''' *Fred Samimi,* 79 FR 18698, 18712 (2014) (quoting 21 U.S.C. 823(f)); *see also Medicine Shoppe-Jonesborough,* 73 FR 364, 386 (2008).

Nor is this the only evidence that supports a finding that Respondent engaged in intentional diversion. Rather, the Government showed that Respondent filled drug cocktails of narcotics such as hydrocodone, benzodiazepines such as alprazolam (Xanax), and Soma (carisoprodol).[4] Indeed, the Government's evidence showed that with respect to patient B.B., Respondent filled prescriptions she presented on a single day for 90 Norco (hydrocodone/apap) 10/325, 90 Xanax 1mg, 90 Soma 350mg, and four ounces of promethazine with codeine cough syrup.[5] GX 3, at 19–20. Moreover, the prescription B.B. presented did not include her address, a violation of 21 CFR 1306.05(a).[6] *Id.* at 19. B.B. was allowed to take the original prescription, notwithstanding that DEA's regulations require that the prescription be filed and maintained by the pharmacy. 21 CFR 1306.24(d). Finally, the evidence suggests that notwithstanding that B.B. had filled four of the five prescriptions on the form, no marking was made on the returned prescription to indicate that Respondent had dispensed the Norco, Xanax, Soma and promethazine with codeine prescriptions. *See* Tr. 53–54 (Expert's testimony that where Respondent returned the original prescription after dispensing controlled substances and did not mark through the drug or note the dispensing on the prescription, this ''allows the patient to refill the same two medications again at another pharmacy'').

There were also multiple other instances in which patients presented prescriptions for a similar drug cocktail of hydrocodone, alprazolam, and carisoprodol, and Respondent filled at least some of the prescriptions. *See* GX 3, at 43 (Rx for J.F., with no patient address, for 240 Norco 10mg, 60 Xanax 1mg, 120 Soma 350mg); *id.* at 47 (Rx to J.G., with no patient address, for 60 Vicodin Extra Strength, 60 Xanax 1mg, and 60 Soma); *id.* at 66–67 (Rx to K.J., with no patient address, for 90 Norco 10mg, 90 Xanax 1mg; 30 Soma; and 4 ounces of Tussionex (hydrocodone) cough syrup).; *id.* at 76 (Rx to S.J., with no patient address, for 240 Norco 10mg, 90 Xanax 1mg; 120 Soma 350mg, and 120 ml of phenergan with codeine); *id.* at 78 (Rx to B.M., with no patient address, for 60 hydrocodone 10/325mg, 60 alprazolam 1mg, 60 Soma 350mg, and 4 ounces of promethazine with codeine); *id.* at 90 (Rx to D.R., with no patient address, for 90 Vicodin 10/500, 60 Xanax 2mg, 60 Soma 350mg, and 4 ounces of Tussionex).

There were also other prescriptions which Respondent filled,

[2] The Government's evidence also showed that Respondent had overages of 445 tablets of methadone 10mg; 1,508 tablets of hydrocodone 5mg; and 18,721 of hydrocodone 7.5mg. Tr. 138–40; GX 13.

[3] Indeed, Respondent notes that the pharmacy has no ''history of break-ins or burglaries.'' Exceptions, at 15 (citing Tr. 157–58). Thus, theft is not a plausible explanation for the massive shortages.

[4] In decisions published before Respondent dispensed the prescriptions at issue here, DEA had discussed the abuse of drug cocktails which included hydrocodone, alprazolam, and carisoprodol. *See East Main Street Pharmacy,* 75 FR 66149, 66158 (2010) (testimony of expert in pharmacy that ''[i]t is well known in the pharmacy profession [that] the combination of a benzodiazepine, narcotic pain killer, and Soma [is] being used by patient abusing prescription drugs''); *Paul Volkman,* 73 FR 30630, 30637 (2008) (testimony of medical expert that ''prescrib[ing] drug cocktails . . . often including an opioid, . . . a benzodiazepine and Soma . . . greatly increased the chance for drug abuse, diversion, [and]/or addiction''). *See also George C. Aycock,* 74 FR 17529, 17531 n.4 (2009); *Your Druggist Pharmacy,* 73 FR 75774, 75775 n.1 (2008).

[5] The prescriptions were written on a single form, and also included a prescription for Lyrica which B.B. did not fill. GX 3, at 19–20.

[6] The labels for the dispensed prescriptions list B.B.'s address as being in Austin, Texas, which is some distance from San Antonio. GX 3, at 20.

notwithstanding that they provided for duplicative therapy of both hydrocodone tablets and narcotic cough syrups, such as Tussionex, which contains hydrocodone; Promethazine with codeine; and Cheratussin AC, a cough medicine which also contains codeine. Here again, the Expert noted that these prescriptions presented red flags which should have been resolved before dispensing the drugs because they contain ''the same ingredient or drug.'' Tr. 44–45. However, there was no evidence that Respondent's pharmacist even attempted to resolve the red flag. *Id.* at 45.[7] *See also* GX 3, at 13 (Tussionex and hydrocodone/apap 10/500); *id.* at 55 (Tussionex and Vicodin 10/500 along with Xanax); *id.* at 57 (Tussionex, Norco 10/325, and Xanax); *id.* at 60–65 (promethazine with codeine, Norco 10/325, and Xanax 2mg); *id.* at 70 (Tussionex, Norco 10/325, and Xanax); *id.* at 97 (Vicodin 10/500, Tussionex, and Xanax); *id.* at 104 (Norco 10/325, Promethazine with codeine, and Xanax 2mg); *id.* at 107 (Norco 10/325, Promethazine w/ codeine, and Xanax).

As it did with B.B., in several instances Respondent returned the original prescriptions to the patient and did so without making any markings or notes indicating that it had dispensed some of the controlled substances. *See* Tr. at 53–54. For example, M.F. presented prescriptions (all on the same form) which authorized the dispensing of both 90 alprazolam 1mg and 60 Xanax 1mg (these being the same drug) but with different dosing instructions, as well as 240 Norco 10mg. GX 3, at 41. While Respondent returned the original prescription to M.F., there is no indication on the copy it retained that it had noted on the original that it had dispensed the 90 tablets of alprazolam. *Id.* at 41–42. *See also id.* at 13 (no marking on Rx indicating dispensing of hydrocodone and alprazolam); *id.* at 43 (no marking on Rx indicating dispensing of alprazolam); *id.* at 70 (no marking on RX indicating dispensing of Tussionex); *id.* at 90 (no marking on Rx indicating dispensing of Xanax); *id.* at 104 (no marking on Rx indicating dispensing of alprazolam and promethazine w/codeine).[8]

In still another other instance, Respondent dispensed a prescription for a 30-day supply of promethazine with codeine cough syrup. GX 4, at 218–19. According to the Expert, cough syrups are typically dispensed in 10–14 day quantities ''for the length of the cough.'' Tr. 47. Moreover, here again, the prescription did not contain the patient's address and was facially invalid. *Id.* at 47; GX 4, at 218. Yet there was no evidence that Respondent resolved the red flags raised by the prescription. Tr. 47; GX 4, at 218–19.[9]

Accordingly, I reject Respondent's assertion that it's ''misconduct cannot be characterized as anything more than negligence.'' Exceptions, at 15. Between the shortages of tens of thousands of dosage units of controlled substances and the numerous dispensing violations, many of which establish that Respondent's pharmacists were engaged in knowing or intentional diversion, the Government has more than met is burden in showing why Respondent's misconduct is egregiousness enough to warrant revocation.[10]

Respondent further argues that because it was not subject to an immediate suspension of its registration and has been permitted to continue to operate since the execution of the Administrative Inspection Warrant in October 2011, ''[t]hese factors militate against revocation.'' *Id.* They don't. The decision as to whether to commence a proceeding by simply issuing an Order to Show Cause or by issuing an Immediate Suspension Order is fully within the Government's prosecutorial discretion, subject of course, to the requirement applicable to the latter that a finding be made that a registrant's continued registration poses ''an imminent danger to the public health or safety.'' 21 U.S.C. 824(d). Indeed, as the Supreme Court has made clear, ''except for [in] extraordinary situations where some valid governmental interest is at stake that justified postponing the hearing until after the'' initial deprivation, the Due Process Clause requires pre-deprivation process when the Government seeks to terminate a property interest. *Boddie* v. *Connecticut,* 401 U.S. 371, 379 (1971). Beyond this, in an ordinary Show Cause Proceeding, the Government is not required to prove that a registrant poses ''an imminent danger to the public health or safety,'' but rather, only whether the registrant ''has committed such acts as would render [its] registration . . . inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). This standard has clearly been met here.[11]

[7] The Expert also explained that ''hydrocodone is a codeine derivative.'' Tr. 44.

[8] In another instance in which Respondent return the hard copy of a prescription to B.M., there are check marks next to hydrocodone, alprazolam, and promethazine, each of which was dispensed on the date the prescription was issued. GX 3, at 78. As the original prescription is not in the record, it is unknown whether these checkmarks were placed on it. However, none of the three drugs were lined out and there is no other notation advising any subsequent pharmacist to whom B.M. might present the prescription that the drugs had been dispensed by Respondent. *Id.*

[9] The prescription also authorized one refill. While there is no evidence that Respondent refilled the prescription (as there is no label corresponding to a refill on the back of the copy of the prescription), as noted above, Respondent had a shortage of more than 27,000 milliliters of promethazine with codeine.

[10] So too, I reject Respondent's eighth exception, in which it argues that most of the suspicious prescriptions raised resolvable red flags and ''unresolvable red flags were not the type that predominated with the Respondent.'' Exceptions, at 18. Notably, as the Government's Expert testified, while some of the red flags were resolvable, there was no evidence that Respondent's pharmacists ever attempted to do so. *See generally* Tr. 30–69, 75, 82–83, 85. As for its contention that prescriptions which raised ''unresolvable red flags'' did not ''predominate[]'' at Respondent, suffice it to say that there were more than enough of them to conclude that Respondent knowingly diverted controlled substances.

In this exception, Respondent also contends that even the Government's Expert acknowledged that sometimes patients may have been given drug samples and thus may not need to fill all of their prescriptions at that time, as well as that some lower income ''patients do not have the funds to get both non-controlled and controlled substances filled at the same time.'' Exceptions, at 18. Putting aside that most of the controlled substances at issue here are available as generic drugs, the fact that a patient may not have sufficient funds to fill all of his/her prescriptions does not excuse Respondent's practice of returning the original prescription form to the patient and then failing to mark on the form what drugs have been dispensed, thus allowing the patient to present the prescription to another pharmacy for filling.

[11] In his seventh exception, Respondent contends that the ALJ's analysis was arbitrary and capricious because she failed to consider factor one—the recommendation of the state licensing board—and factor three—the registrant's conviction record of controlled substances offense. Exceptions, at 16. It is true that the ALJ made no findings with respect to either factor. *See* R.D. at 21–31.

For purposes of this review, I have assumed that Respondent holds an unrestricted state license. There is, however, no recommendation from the Texas State Board of Pharmacy in the record. Moreover, even assuming that Respondent retains its state license (and that its license is not subject to any restrictions on its controlled substance dispensing authority), DEA has repeatedly held that while a practitioner's possession of state authority constitutes an essential condition for maintaining a registration, *see* 21 U.S.C. 802(21) & 823(f), it '''is not dispositive of the public interest inquiry.''' *George Mathew,* 75 FR 66138, 66145 (2010), *pet. for rev. denied Mathew* v. *DEA,* 472 Fed. Appx. 453, 455 (9th Cir. 2012); *see also Patrick W. Stodola,* 74 FR 20727, 20730 n.16 (2009); *Robert A. Leslie,* 68 FR 15227, 15230 (2003). As the Agency has long held, ''the 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.'' *Mortimer Levin,* 57 FR 8680, 8681 (1992). Thus, while Respondent satisfies the CSA's requirement that it be currently authorized to dispense controlled substances under the laws of the State in which it practices pharmacy, this factor is not dispositive either for, or against, the continuation of Respondent's registration. *Paul Weir Battershell,* 76 FR 44359, 44366 (2011) (citing *Edmund Chein,* 72 FR 6580, 6590 (2007), *pet. for rev. denied Chein* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008)).

As for factor three, I find that there is no evidence that either Respondent, or its principal, has been

Continued

Exceptions Two and Three—The ALJ's Failure To Rule on the Government's Motion *in Limine* and Rejection of Respondent's Testimony Regarding Remedial Measures

According to Respondent, in its Prehearing Statement and Supplemental Prehearing Statement, it provided notice of its intent to introduce evidence of its remedial measures. Exceptions, at 5–6. In response, the Government filed a Motion *in Limine* to bar the evidence on the ground that because Respondent had provided no notice of its intent to accept responsibility for its misconduct, this evidence was irrelevant. *Id.* at 6. Thereafter, Respondent filed a ''Motion for Leave to File Second Supplemental Prehearing Statement,'' which included a section in which Respondent provided notice to the Government ''admit[ting] that the Government . . . has met its burden and shown by a preponderance of evidence that Respondent has committed acts inconsistent with the public interest.'' Response to Gov. Motion *in Limine* and Motion for Leave to File Resp.'s Second Supp. Pre-hearing Statement, at 2.[12]

According to Respondent, ''the ALJ never ruled on the Government's Motion *in Limine* and never gave [it, *i.e.,* Respondent] permission to include in its Prehearing Exhibits any evidence related to the remedial measures it had taken since being served with the'' Administrative Inspection Warrant. Exceptions, at 6. Respondent maintains that had such permission been granted, it would have put forward such evidence as its policies and procedures, continuing education certificates, evidence of criminal background checks conducted on its employees, and its operations manual which includes training of its pharmacists and pharmacy technicians in identifying and resolving red flags. *Id.* at 6–7. However, it then asserts that because the ALJ ''had not granted [it] permission to supplement its [p]rehearing [e]xhibits . . . it was consigned to discussing these remedial measure through the sworn testimony of'' its owner. *Id.* Continuing, Respondent asserts that because the ALJ ultimately gave little weight to its owner's testimony, the ALJ ''put Respondent in an unwinnable situation.'' *Id.* at 9.

While it is true that the ALJ did not rule on either the Government's motion *in limine* or Respondent's motion to file a second supplemental pre-hearing statement prior to the hearing, I find Respondent's argument entirely unpersuasive for several reasons. First, Respondent ignores that prior to the ALJ's ruling, it filed a Response to the Government's Motion *in Limine* in which it expressly stated that it ''does not intend to introduce any other documentary evidence other than that made a part of his'' Supplemental Pre-Hearing Statement. Response to Gov't Mot. in Limine, at 5. However, in its Supplemental Pre-Hearing Statement, Respondent had proposed to introduce only three exhibits: (1) A criminal background check of its employee A.G. from 2008; (2) a copy of the Texas Board of Pharmacy rule establishing disciplinary sanctions on licensees and registrants for various criminal offenses (22 Tex. Admin. Code § 281.64); and 3) prescription copies (front and back) for nine patients. Resp. Supplemental Pre-Hrng. Statement, at 23. While Respondent did introduce both the criminal background check on A.G. and the Board of Pharmacy rule, neither of these was probative of the issue of whether Respondent has undertaken sufficient remedial measures to rebut the Government's *prima facie* case.

Second, while the ALJ did not rule on either motion prior to the hearing, her Order made clear that she would ''decide on the admissibility of each piece of evidence as it is offered.'' Order Deferring Judgment on Govt. Mot. *in Limine* and Resp.'s Mot. to File Second Supp. Prehearing Statement, at 2. However, at the hearing, Respondent did not seek to introduce any documentary evidence other than the two exhibits identified above.

Third, notwithstanding that in its Pre-Hearing Statement, Respondent identified two witnesses (A.C., a pharmacist, and R.G., a pharmacy tech) in addition to its owner/pharmacist-in-charge, and proffered that these witnesses would testify as to various procedures being employed by the pharmacy to ensure compliance with federal law, *see* Resp. Pre-Hrng. Statement at 19–21, Respondent did not call either person to testify. Notably, in its Response to the Government's Motion *in Limine,* Respondent continued to identify these two witnesses (in addition to its owner) as offering ''testimony [that] is relevant and material to show the Respondent will not engage in future misconduct.'' Resp. to Govt's Motion *in Limine,* at 5. Thus, even if the ALJ's deferral of her ruling created some uncertainty as to whether the testimony of these witnesses would be admissible, Respondent's failure to call these witnesses constitutes a waiver of the issue.

Nor do I find merit in Respondent's contention that the ALJ imposed on it an undefined and vague standard of proof when she rejected its owner's testimony as to several assertions regarding remedial measures it had undertaken in the absence of corroborating evidence. Indeed, even were I to find some merit to this contention, it would not change my ultimate decision, because Respondent ignores that the ALJ also questioned the credibility of its owner's testimony regarding his acceptance of responsibility. Moreover, my own review of the record finds that Respondent's testimony as to his acceptance of responsibility is properly described as double talk, because while he initially testified that he accepted responsibility for his misconduct, on further questioning he denied having ever diverted drugs. So too, while the Government put forward Expert testimony that there were numerous prescriptions which raised red flags and which should not have been filled, either because Respondent never attempted to resolve the red flag (if it was resolvable) or the red flags were not resolvable, Mr. Lewka nonetheless maintained that there were no prescriptions which Respondent should not have filled.

While the ALJ noted that on direct examination, Mr. Lewka took full responsibility for its misconduct, she further found that on cross-examination, ''he presented testimony inconsistent with other testimony in the record.'' R.D. at 29. As support, the ALJ specifically noted Mr. Lewka's testimony regarding the hiring of A.G. to work as a driver delivering prescriptions, including controlled substance prescriptions. *Id.; see also* Tr. 127. As explained above, this was a violation of DEA regulations. *See* 21 CFR 1301.76(a). According to A.G., he told Mr. Lewka that he had a felony conviction for distributing controlled substances before he started working for Respondent. Tr. 16. Mr. Lewka denied

convicted of an offense related to the manufacture, distribution or dispensing of controlled substances. There are, however, a number of reasons why a person (whether a corporate entity or natural person) may never be convicted of an offense falling under this factor, let alone be prosecuted for one. Thus, ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is not dispositive. *Dewey C. MacKay,* 75 FR 49956, 49973 (2010), *pet. for rev. denied MacKay v. DEA,* 664 F.3d 808 (10th Cir. 2011).

I therefore reject Respondent's exception.

[12] In this pleading, Respondent provided notice that it intended to withdraw two witnesses it had previously identified as J.A.C. and L.D.A. Resp. to Gov. Mot. *in Limine* and Motion for Leave to File Resp.'s Second Supp. Prehearing Statement, at 5. However, Respondent reiterated its earlier notice that it intended to call Respondent's owner and pharmacist-in-charge, a second pharmacist-employee, and a pharmacy technicians, maintaining that ''their testimony is relevant and material to show the Respondent will not engage in future misconduct.'' *Id.*

this, *id.* at 200–01, even though the evidence showed that Lewka told A.G. to obtain his criminal history and A.G. obtained a letter from the San Antonio, Texas Police Department, which while showing that he had not been arrested by San Antonio police, explicitly stated that the ''background check does not include [the] Bexar county Sheriff['s] Office, other cities, counties or states.'' RX 1.[13]

Moreover, a DEA Investigator credibly testified that she had told Mr. Lewka that A.G. had a felony conviction in July of 2013. R.D. at 14 (citing Tr. 132). Mr. Lewka continued to employ A.G. until September 2013, Tr. 14, maintaining that DEA did not tell him that A.G. was a convicted felon until September 2013. *Id.* at 204; *see also* R.D. at 29.

As another example of his inconsistent testimony regarding his acceptance of responsibility, the ALJ relied on Mr. Lewka's testimony regarding Respondent's handling of various prescriptions, which contained prescriptions for both controlled and non-controlled drugs and which were stamped by the physician's instruction to the pharmacy to fill ''all or none'' of the prescriptions. The Government produced evidence showing that in several instances, Respondent had dispensed only the controlled substances and/or disregarded the physician's instruction to fill ''all or none.'' *See* GX 3, at 15, 17, 55, and 96.

As for Mr. Lewka's testimony regarding this conduct, the ALJ found that he ''seemed to deny that there was any misconduct when the prescription contained both controlled substances and non-controlled substances,'' or included the physician's instruction to fill ''all or none'' of the prescriptions'' and ''was filled by only distributing the controlled substances.'' R.D. at 29. As the record shows, the Government specifically asked Mr. Lewka regarding a prescription for three drugs, including promethazine with codeine cough syrup, issued to patient L.B. which was stamped in two places with the instruction ''ALL OR NONE.'' Tr. 206; GX 3, at 15. The evidence further showed that Respondent dispensed only the promethazine with codeine. *See* GX 3, at 16.

When asked if he had disobeyed the prescribing physician's instructions, Mr. Lewka asserted: ''[t]hat's not true'' because he had personally called the physician. Tr. 206. When then asked why there was no such note on the prescription,[14] Mr. Lewka asserted that the note was ''on the computer'' and that one of the Agency's Investigators ''was supposed to access what we have in the computer that attached to most of these prescriptions.'' *Id.* at 207. However, when the Government pointed out that the Show Cause Order had specifically alleged that Respondent's dispensing of this prescription was unlawful, Mr. Lewka asserted that he didn't know that he would have to bring his computer notes. *Id.* at 207–08.

When the Government again asked Mr. Lewka whether he was accepting responsibility, he asserted that he was ''accepting responsibility, but . . . was explaining what I did on the process.'' *Id.* at 210. However, when the Government again asked whether he had disobeyed the doctor's ''all or none'' instruction, Mr. Lewka again asserted that he had talked to L.B.'s doctor. As for what L.B.'s doctor told him, Mr. Lewka replied:

> Well, he said one of the problems he having [sic] is he put them in to see if they'll get them, but if they don't have insurance, than they should get what they want. I told him personally, I said, [q]uit having your employee stamp the prescriptions; it's affecting the customers. He said, [t]hat's the procedure we do here, and they're supposed to fill the prescriptions at that doctor's pharmacy, and I don't know why they brought them out. That's what he told me. And he make me have some of them come back with the prescriptions.

Tr. 210.

Noting that Respondent failed to produce any evidence to support Mr. Lewka's claim that he had called the physician who approved his filling only the promethazine, the ALJ concluded that ''[t]his inconsistent testimony certainly calls into question [his] genuine remorse for the misconduct proved by the Government.'' R.D. at 29. Indeed, on this issue, Mr. Lewka testified out of both sides of his mouth, and as ultimate factfinder, *see* 5 U.S.C. § 557(b), I do not believe his testimony that a physician who had previously instructed the pharmacist to fill ''all or none'' of a prescription, would then tell the pharmacist that the patient ''should get what they want.''

Moreover, while Mr. Lewka offered a generalized acceptance of responsibility to the allegations, other portions of his testimony demonstrate that he is not sincerely remorseful. When asked by his counsel to explain his professed understanding of ''the importance of avoiding diversion'' and why this Agency is concerned with diversion, Mr. Lewka testified:

> Well, that the cocktail medication that you fill in the pharmacy has to be for good legitimate reasons, and diversion is costing the country and everybody a lot of problems. There's a lot of drug addicts out there, *but I never do diversion at Medicine Shoppe.* I never knew that some of the things they said on the paper was diversion. I looked at it. It's not diversion at that point, because I've already talked to the doctor. I know the patient, and I also do what they want us to do now, making sure that you are also liable for what the patient is doing.
>
> But diversion is when multiple patients . . . bring cocktail medication, like controlled substances, Xanax, Soma, hydrocodone, all in one prescription, scripts, with the intent to—like in this case, if Dr. [L] give me a prescription with all the same patients have the same prescriptions, and they brought it to the pharmacy, and we were filling it, we made a lot of calls to him, especially those that work for him, all they say, That's what the doctor wants, and that's how the doctor write his prescriptions.

Tr. 197 (emphasis added). Unexplained by Mr. Lewka is why, if he never does

[13] In his ninth exception, Respondent challenges the ALJ's finding that it violated DEA regulations because it employed a person with a felony drug conviction as its delivery driver. Exceptions, at 19–23. While Respondent does not dispute that this was a violation of a DEA regulation, it argues that the ALJ acted arbitrarily and capriciously because she ''placed great emphasis'' on the violation, which it maintains was unintentional. *Id.* at 19–20. It further maintains that the former employee ''lied during his testimony and stated that he informed [Respondent's owner] at the time he was hired as a delivery driver in 2008 that he had a felony conviction for a drug offense.'' *Id.* at 20.

To the extent the ALJ found credible the former employee's testimony that he had told Respondent's owner about his felony drug conviction at the time of his employment interview, *see* R.D. at 29, I adopt her finding. Indeed, the evidence showed that following the interview, Respondent directed the employee to obtain his criminal history. Thus, there was obviously some discussion between the employee and Respondent's owner as to the former's criminal history.

Most significantly, the report which was provided by the San Antonio Police Department clearly indicated that it was limited to the Police Department's records and did not include the records of the ''Bexar County Sheriff,'' as well as others cities, counties or states. RX 1. Given this disclaimer, Respondent cannot credibly claim that he was duped when the report came back negative for any criminal history. *See* Exceptions at 21 (asserting that Respondent's owner ''was duped and did not know that the Bexar County Sheriff's Department criminal records check would not contain all of A.G.'s criminal history''). Moreover, as the employer, Respondent's owner was the person responsible for conducting a proper background check. Thus, even if his failure to perform a proper background check does not rise to the level of an intentional violation of the regulation, it was still properly considered by the ALJ as evidence of his compliance with applicable laws related to controlled substances. *See* 21 U.S.C. § 823(f)(4). Notably, the ALJ did not state that this violation alone was sufficient to warrant the revocation of Respondent's registration. Nor do I. I thus reject this exception.

[14] The Government's Expert testified that a red flag is raised when a customer presents a prescription for both controlled and non-controlled drugs but requests that the pharmacy fill only the controlled substances. Tr. 32–33. She further testified that the resolution of the red flag would be documented ''directly on the hard copy prescription and possibly in the patient's profile.'' *Id.* at 33.

diversion, he even offered his token acceptance of responsibility. So too, in Mr. Lewka's view, only when drug cocktails of Xanax, Soma (carisoprodol) and hydrocodone are prescribed to multiple patients are the prescriptions being diverted; thus, if a single patient presents these prescriptions, it is not diversion and is appropriate to fill the prescriptions. And as long as the doctor's staff says that a cocktail of these three drugs is ''what the doctor wants, and that's how the doctor write his prescriptions,'' it is appropriate to fill the prescriptions.

This view, however, has been squarely rejected by both the federal courts and this Agency. *See United States* v. *Hayes,* 595 F.2d 258, 261 (5th Cir. 1979) (''Verification by the issuing practitioner on request of the pharmacist is evidence that the pharmacist lacks knowledge that the prescription was issued outside the scope of professional practice. But it is not an insurance policy against a fact finder's concluding that the pharmacist had the requisite knowledge despite a purported but false verification.''); *United States* v. *Seelig,* 622 F.2d 207, 213 (6th Cir. 1980) (upholding jury instruction that knowledge may be inferred from evidence that pharmacists ''deliberately close their eyes to what would otherwise be obvious to them''); *Holiday CVS, L.L.C., d/b/a CVS Pharmacy Nos. 219 and 5195,* 77 FR 62315, 62322 n.26 (2012) (noting that ''for more than thirty years (if not longer), it has been settled law that a pharmacist can be held liable for violating 21 CFR 1306.04(a) even if he calls the prescriber and verifies the prescriptions''); *Ralph J. Bertolino,* 55 FR 4730 (1990).

Moreover, when asked whether there were ''any specific prescriptions'' which the Government's Expert opined should not have been filled, which he ''agree[d] should not have been filled,'' Tr. 219, Respondent again offered testimony inconsistent with his earlier statement that he accepted responsibility. He testified that:

> There's *no prescription* that she said that I shouldn't have filled that I looked at it from her point of view. But most of the things she said was factual. But not filling the prescriptions—I know the prescription; I know the doctors; I know the patients more than she does, so she was looking at it from somebody who do relief. I don't relieve. I'm a regular pharmacist on this station, so I know most of my customers.

Tr. 219–20 (emphasis added).

However, as explained above, the Expert identified twelve different issues with the prescriptions Respondent filled. These include, *inter alia,* that various prescriptions were missing the patient's address; some prescriptions bore a stamped signature rather than the prescriber's actual signature; some prescriptions were entirely missing the prescriber's signature; some prescriptions were missing the prescriber's DEA number; some labels bore a different prescriber name than that of the actual prescriber; some doctors were prescribing drug cocktails of narcotics, benzodiazepines, and carisoprodol; some patients were filling prescriptions for duplicative narcotics such as hydrocodone tablets and hydrocodone cough syrups; and a prescription for a narcotic cough syrup authorized the dispensing of a quantity of the drug that far exceeded the quantity ordinarily prescribed in the course of legitimate medical treatment. Finally, Respondent filled controlled substance prescriptions for multiple patients and then returned the original prescriptions to the patients without making any marking on the original prescriptions that a controlled substance had been dispensed, thus allowing the patients to obtain the same drug at a second pharmacy.[15]

Yet Respondent asserted that none of these dispensings was improper. Moreover, as the ALJ found, Respondent entirely failed to address the shortages found during the DEA audit.

I thus conclude that Respondent has not accepted responsibility for its misconduct. As such there is no need to address whether the remedial measures he claims to have instituted are adequate to protect the public interest. *Medicine Shoppe—Jonesborough,* 73 FR 363, 387 (2008). Indeed, in light of Mr. Lewka's testimony to the effect that it is appropriate to fill prescriptions for drug cocktails as long as the doctor's staff tells him that is how the doctor writes his prescriptions, I would still conclude—even were I to give weight to all of Mr. Lewka's testimony as to his remedial measures—that his understanding of his obligations as a dispenser of controlled substances is so lacking as to preclude a finding that Respondent's registration is consistent with the public interest. *See* 21 U.S.C. 823(f) and 824(a)(4).

Finally, in its twelfth exception, Respondent contends that the ALJ's recommended order of revocation is arbitrary and capricious because:

> [c]urrent DEA precedent sets up a no win scenario for any registrant that has in its history one or two violations of DEA Regulations. That is, DEA precedent holds that unless the Respondent accepted responsibility for its ''misconduct.'' Even if there is no intentional diversion by the Respondent. Consequently, the Respondent's due process rights have been denied since there is no meaningful and fair due process proceeding available.

Exceptions, at 25–26.

As found above, Respondent is in no position to argue that it has been placed in a ''no win'' scenario either because it has committed only one or two violations of DEA regulations or has not intentionally diverted controlled substances. Rather, the record is replete with various violations of the CSA, including violations which support a finding that it intentionally diverted drugs. So too, the record establishes that it cannot account for tens of thousands of dosage units. Thus, to the extent Respondent is in a ''no win scenario,'' this is entirely of its own making.

As for its opaque suggestion that it has been denied a fair hearing because the Agency's precedent required it to acknowledge its misconduct, this is an argument which, while not framed in constitutional terms, has previously been tried and rejected. As the Tenth

[15] In his tenth exception, Respondent maintains that his recordkeeping deficiencies ''were situational and the result of the turbulent and catastrophic demise and ultimate death of Mr. Lewka's wife.'' Exceptions, at 23. The record is, however, devoid of any evidence to support this contention.

Respondent also argues that his recordkeeping errors are not sufficiently egregious to warrant revocation. *Id.* (citing *Terese, Inc., d/b/a Peach Orchard Drugs,* 76 FR 46483, 46848 (2011)). Respondent also cites *Howard N. Robinson,* 79 FR 19356 (2014) (in his eleventh exception), apparently arguing that the audit results should be considered along with the evidence as to their underlying cause.

As for the first contention, in *Terese,* the Government put forward no evidence that it had done an audit and found that the pharmacy could not account for the controlled substances it handled, and the three recordkeeping violations that were proved were comparatively minor and corrected as soon as they were brought to the attention of the pharmacist. *See* 76 FR at 46848. So too, while in *Robinson,* the Administrator rejected the Government's contention that the audit results warranted the revocation of his registration, she noted that the ALJ had found that the physician had put forward credible evidence that the shortages were the result of diversion which was committed by ''a rogue employee, who happened to be a convicted drug smuggler,'' who was hired by the physician's employer and not the physician, and had since been terminated. 79 FR at 19357. Moreover, the Administrator noted that the physician's misconduct was merely negligent, that he ''fully accepted responsibility and demonstrated that he [wa]s not likely to commit similar omissions in the future.'' *Id.* By contrast, in this matter, Respondent has failed to offer any explanation as to the likely cause of the massive shortages found during the audit, and while Respondent contends that the ALJ ignored evidence that Mr. Lewka had hired an independent company to conduct an inventory, Exceptions, at 24; an inventory and audit are not the same, and in any event, there is no evidence in the record establishing that Respondent hired an independent firm to conduct either inventories or audits.

Circuit held in rejecting a challenge to the Agency's rule:

> 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 Deputy 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.

MacKay v. *DEA,* 664 F.3d 808, 820 (10th Cir. 2011) (citing *Hoxie* v. *DEA,* 419 F.3d 477, 483 (6th Cir. 2005)); *see also Hoxie,* 419 F.3d at 483 (''The DEA properly considers the candor of the physician . . . and admitting fault [to be] important factors in determining whether the physician's registration should be revoked.''). I therefore also reject this exception.

Conclusion

Finding no merit in any of Respondent's Exceptions, I reject its contention that I should either reopen the hearing or impose a lesser sanction such as probation with monitoring. Because I find that substantial evidence supports the conclusion that Respondent's registration is ''inconsistent with the public interest,'' 21 U.S.C. 824(a)(4), I adopt the ALJ's recommendation that I revoke its registration.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a)(4), as well as 28 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration BT8599891, issued to The Medicine Shoppe, be, and it hereby is, revoked. I further order that any pending application of The Medicine Shoppe to renew or modify its registration be, and it hereby is, denied. This Order is effective November 3, 2014.

Dated: September 18, 2014.

Thomas M. Harrigan,

Deputy Administrator.

Frank Mann, Esq., for the Government.
Jeffrey C. Grass, Esq., for the Respondent.

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION OF THE ADMINISTRATIVE LAW JUDGE

I. INTRODUCTION

Gail A. Randall, Administrative Law Judge. This proceeding is an adjudication governed by the Administrative Procedure Act, 5 U.S.C. §§ 551 *et. seq.,* to determine whether a pharmacy's registration with the Drug Enforcement Administration (''DEA'') should be revoked and any pending applications for renewal of such registration be denied under the Controlled Substances Act, 21 U.S.C. §§ 823(f) and 824(a).

I. PROCEDURAL BACKGROUND

On October 7, 2013, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause, proposing to revoke DEA Certificate of Registration, Number BT8599891, of the Medicine Shoppe, (''Respondent''), as a retail pharmacy, pursuant to 21 U.S.C. § 824(a), and deny any pending applications for renewal or modification of such registration, pursuant to 21 U.S.C.§ 823(f). [Administrative Law Judge Exhibit (''ALJ Exh.'') 1]. On October 18, 2013, The Medicine Shoppe, through counsel, filed a written request for a hearing. [ALJ Exh. 2].

A hearing was held in San Antonio, Texas, on January 7, 2014. [ALJ Exh. 4]. On February 18, 2014, the Government filed its Proposed Findings of Fact and Conclusions of Law (''Government's Brief''). Also on February 18, 2014, the Respondent filed its Proposed Findings of Fact and Conclusions of Law (''Respondent's Brief'').

II. ISSUE

The issue in this proceeding is whether or not the record as a whole establishes by a preponderance of the evidence that the Drug Enforcement Administration should revoke the DEA Certificate of Registration, Number BT8599891, of The Medicine Shoppe, as a retail pharmacy pursuant to 21 USC § 824(a), and deny any pending applications for renewal or modification of such registration, pursuant to 21 U.S.C. § 823(f), because its continued registration would be inconsistent with the public interest, as that term is defined in 21 U.S.C. § 823(f). [ALJ Exh. 3; Transcript ''Tr.'' at 5].

III. FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts:

A. Stipulated Facts

The parties have stipulated to the following fact: Respondent is registered with DEA as a retail pharmacy authorized to handle controlled substances in Schedules II–V under DEA COR (Certificate of Registration) number BT8599891 at 2004 East Houston Street, San Antonio, Texas. DEA Certificate of Registration BT8599891 will expire by its terms on November 30, 2015. [ALJ Exh. 3; Tr. at 7–8].

At the hearing, the parties also stipulated to the following fact: Respondent, The Medicine Shoppe, employed and paid wages to A.G. during the years 2011, 2012, and 2013. [Tr. at 8].

B. The Investigation

Diversion Investigator (''DI'') Ramirez has been a Diversion Investigator for DEA for approximately four-and-one-half years. [Tr. 102]. She began her investigation of the Respondent after she learned that patients of a specific doctor accused of issuing illegitimate prescriptions were filling those prescriptions at the Respondent pharmacy. [Tr. 103]. The investigation was not started in response to any complaints about the Respondent's dispensing practices. [Tr. 157].

On November 9, 2011, an administrative inspection warrant was executed at the Respondent's location. [Tr. 159]. DEA inspected and copied Respondent's records, to include original prescriptions, copies of prescriptions, records showing the receipt of controlled substances, and computer data [16]. [Tr. 108]. From that date until the present, the pharmacy continued to operate. [Tr. 161]. The record shows that Mr. Lekwa, owner and pharmacist in charge, was cooperative with the DEA. [Tr. 164].

The record contains no evidence that the Respondent pharmacy, any pharmacist or pharmacy technician who has worked for the Respondent has ever been charged with any crime by a state or federal law enforcement agency.[17] [Tr. 183]. Further, the Respondent has not had any suspicious reports regarding break-ins or burglaries. [Tr. 157–58].

C. Red Flags

Dr. Amy Poore Witte works at the University of the Incarnate Word, San Antonio, Texas. Since July of 2006, Dr. Witte has served as an associate professor with tenured status in the Department of Pharmacy Practice. [Tr. 26–27]. In May of 2004, Dr. Witte was awarded her doctorate of pharmacy degree. [Tr. 27–28]. Dr. Witte worked as a licensed pharmacist for Walgreens from 2004 to 2010, and she currently has a clinical pharmacist position at the VA Hospital in San Antonio, Texas. [Tr. 28]. As a licensed pharmacist, Dr. Witte has experience in dispensing controlled substances. [Tr. 29; Government Exhibit (''Gov't Exh.'') 2].

As a professor, Dr. Witte taught a class in pharmacy law, and she is familiar with the requirements for dispensing controlled substances under both Texas and federal law. [Tr. 29–30]. Dr. Witte was the Government's witness and was recognized as an expert witness in the field of retail pharmacy. [Tr. 35].

Dr. Witte explained the method a pharmacist would use to dispense a controlled substance. First, the pharmacist would look at the prescription to determine if it is facially valid. Specifically, the pharmacist would ensure the prescription contains the patient's name and address. Next, she would look at the bottom of the prescription to verify that a physician has manually signed the prescription, and has entered the date of the prescription and a DEA number. Lastly, she would look at the body of the prescription for the drug name, the strength or dose of the drug, the quantity to dispense, and the directions for use. [Tr. 30].

Dr. Witte confirmed that a pharmacist has a corresponding responsibility to ensure that a prescription for a controlled substance is issued for a legitimate medical purpose. [Tr. 31]. To determine this purpose, the

[16] DEA had difficulties downloading data from the Respondent's computer. DI Ramirez testified that this was why information from the computer was not utilized or made part of the record in this proceeding. [Tr. 166].

[17] However, the Respondent hired and fired a delivery driver with a felony conviction related to the handling of controlled substances. This will be discussed *infra.*

pharmacist talks to the patient and reviews the patient's prescription profile. [Tr. 31]. The pharmacist looks to determine if the patient has used the controlled substance in the past, whether the patient is obtaining the drug from multiple physicians, and whether the prescription is tailored to the patient's needs. [Tr. 31–32].

The pharmacist may encounter ''red flags'' when presented with the prescription. Dr. Witte defined a ''red flag'' as something ''brought to your attention when looking at the prescription which could lead you to think there may be signs of drug diversion.'' [Tr. 32]. Examples of ''red flags'' would be a prescription for an unusually large quantity of the controlled substance, irregular dosing instructions, and a patient opting to fill only controlled substances on a prescription that also contains a noncontrolled substance. [Tr. 32–33]. It is accepted practice for a pharmacist to investigate the ''red flag'' and to note on the hard copy of the prescription the results of that investigation. [Tr. 33]. Such investigation takes place before the drug is dispensed. [Tr. 33].

Dr. Witte reviewed several hundred prescriptions dispensed at the Respondent. [Tr. 36; Govt Exhs. 3, 4, 8, 9]. These prescriptions were for both controlled and noncontrolled substances. [Tr. 36]. In general, Dr. Witte noticed that there were issues with the prescriptions, to include 1) missing patients' addresses, 2) missing DEA numbers, 3) the wrong physician's name on the dispensing label, 4) stamped signatures instead of manual signatures, and 5) prescribing patterns by specific physicians. [Tr. 37]. It is not acceptable pharmacy practice to dispense a prescription without an address, with a stamped signature, or with a missing DEA number. [Tr. 37–38].

Dr. Witte also explained that a ''drug cocktail'' is usually two or more controlled substances on a prescription that are usually highly abused drugs sought by drug-seeking individuals. [Tr. 39]. A prescription containing a ''drug cocktail'' would be a potential ''red flag'' for diversion. [Tr. 39]. In one instance, customer C.H. received a ''drug cocktail'' of Tussionex, hydrocodone, and alprazolam. The prescription also contained non-controlled substances, which the customer declined to get filled. The non-controlled substances were ''maintenance meds'' which are ''used to treat chronic health conditions'' and would be needed ''right away.'' [Tr. 60; Gov't Exh. 3 at 57–58]. Dr. Witte noted that the resolution of this ''red flag'' was not annotated on the prescription, and accordingly, these prescriptions should not have been filled.

''Pattern prescribing'' occurs when a physician prescribes the same drug and the same dosage to every patient the physician sees. This is another ''red flag,'' for the prescription should be tailored to each patient's individual needs based on their chronic conditions. [Tr. 39–40]. In reviewing prescriptions from the Respondent, Dr. Witte recalled seeing prescriptions that were indicative of pattern prescribing by a Dr. Edwards. [Tr. 40]. Prior to September of 2011, Dr. Edwards prescribed Xanax and hydrocodone to all of his patients [18]. [Tr. 40]. Dr. Witte reviewed a specific prescription of Dr. Edwards' that fit this pattern. [Tr. 41; Gov't Exh. 9 at 66]. She also noted that the prescription contained a stamped signature. [Tr. 41; Gov't Exh. 9 at 66]. The dosing instructions were also unusual. All of these examples would be ''red flags'' for potential diversion. [Tr. 42; *see also* Gov't Exh. 9 at 68]. The prescription contains no evidence that these ''red flags'' were investigated prior to the dispensing of these drugs. [Tr. 42]. In Dr. Witte's opinion, these drugs should not have been dispensed without resolving these ''red flags.'' [Tr. 42].

Another of Dr. Edwards' prescriptions contained two drugs that were codeine based. [Gov't Exh. 8 at 7]. Dr. Witte explained that such prescribing would be a ''red flag'' and she would not have dispensed this prescription without first talking to the physician to suggest he change one of the codeine derivative drugs. [Tr. 44–45]. The prescription did not contain any evidence that this ''red flag'' was resolved prior to dispensing the drugs. [Tr. 45].

Dr. Edwards also prescribed two medications to patient D.K., hydrocodone, a Schedule III controlled substance, and Skelaxin, a non-controlled drug. Both of these drugs are designed to treat the same condition in the same manner. [Tr. 45–46; Gov't Exh. 8 at 16]. Dr. Witte found that this would be a ''red flag,'' and the prescription fails to contain an annotation of the actions taken to resolve this ''red flag'' prior to dispensing the drugs. [Tr. 46].

Reviewing another prescription, Dr. Witte noticed that a cough syrup containing codeine, promethazine with codeine, was dispensed in a thirty-day amount. [Tr. 47; Gov't Exh. 4 at 218]. Dr. Witte explained that cough syrup is usually not dispensed in such an amount. Rather, a cough syrup is dispensed for the length of the illness, usually ten to fourteen days. [Tr. 47]. Also, the address is missing on this prescription. [Tr. 47; Gov't Exh. 4 at 218]. These would be two ''red flags'' for this prescription. The prescription contains no evidence that these ''red flags'' were resolved prior to dispensing the medication. [Tr. 47–48].

Reviewing another prescription, Dr. Witte noted that a prescription was presented with the refill portion of the prescription left blank. [Tr. 48; Gov't Exh. 4 at 98]. That would be a ''red flag,'' for the prescription was for a controlled substance, and anyone could have filled in the refill number prior to presenting the prescription for dispensing. [Tr. 48]. The second prescription on the page was for a controlled substance and also had a blank refill portion of the prescription. Both prescriptions lacked a patient address. [Tr. 48–49; Gov't Exh. 4 at 98]. There was no evidence that these ''red flags'' were resolved prior to dispensing the drug. [Tr. 49]. Dr. Witte opined that these two prescriptions should not have been dispensed, given the unresolved ''red flags.'' [Tr. 49].

In her review of prescriptions, Dr. Witte noted that on several occasions a controlled substance was dispensed, and the patient was given back the hard copy of the prescription. [Tr. 51–55, 165; Gov't Exh. 3 at 13–14, 19–20]. Such a practice is not acceptable in the field of pharmacy and creates a risk of diversion [19]. [Tr. 52, 54–55].[20]

On a prescription dated December 2, 2010, the physician had stamped ''All or None.'' The prescription was for three drugs, and the only drug dispensed was the controlled substance. [Tr. 56–57; Gov't Exh. 3 at 15–16]. Also, the physician's DEA number was missing on the prescription, and the patient's address was missing. [Tr. 56]. Such a prescription would have been a ''red flag'' which should have been resolved prior to dispensing the medication. Per Dr. Witte, no resolution was annotated on the prescription. [Tr. 57]. She opined that this prescription should not have been dispensed in the manner utilized by the Respondent's pharmacist. [Tr. 57; *see also* Gov't Exh. 3 at 17–18 and Tr. 57–59].

Dr. Witte reviewed another prescription dated December 15, 2010, which contained a total of five drugs. The patient only requested that the controlled substances be dispensed. [Tr. 59–60; Gov't Exh. 3 at 57–58]. Such conduct would be a ''red flag'' and should have been resolved prior to dispensing the medication. Dr. Witte saw no evidence that the problems were resolved prior to dispensing the medication, and she opined that these controlled substances should not have been dispensed prior to resolving these ''red flags.'' [Tr. 60]. Likewise, two patients sharing the same address presented prescriptions with multiple medications, and the pharmacist only filled the controlled substance. [Tr. 61–63; Gov't Exh. 4 at 235–36]. Again, such conduct would be a ''red flag,'' and the prescription fails to indicate any action taken to resolve the ''red flag'' prior to dispensing the controlled substance. [Tr. 62].

Dr. Witte also reviewed two prescriptions written for the same patient. One was dated November 23, 2010, and the second prescription was dated December 9, 2010, and both prescriptions contained controlled substances. [Tr. 65; Gov't Exh. 3 at 70, 76]. The prescriptions were written by different practitioners. After filling the controlled substance on the November 23, 2010 prescription, the pharmacist handed back the prescription to the patient. Such conduct would allow the patient to fill the November 23 prescription at another pharmacy, and then fill the December 9 prescription at yet another pharmacy. Although the controlled substance was dispensed from the November

[18] Such prescriptions would be for a ''drug cocktail.'' [Tr. 40–41; Gov't Exh. 9 at 66].

[19] However, on cross-examination, DI Ramirez credibly testified that she had not investigated whether or not these prescriptions resulted in duplicate filling of controlled substances. [Tr. 165].

[20] Dr. Witte also credibly testified that on one prescription an annotation stating ''Pt took hard copy back'' meant that the patient took back the hard copy of the prescription. [Gov't Exh. 3 at 70]. However, since the comment was not initialed, Dr. Witte did not know who had written the comment. [Tr. 99–100]. I find that it is a reasonable assumption, based on the totality of the prescriptions presented and the lack of any challenge from the Respondent concerning this notation, that the annotation was made by an employee of the Respondent. [Tr. 109–111].

23 prescription, the prescription did not contain a notation of the dispensing that would alert any other pharmacist that that drug had already been dispensed. [Tr. 65–66]. Such prescriptions, as handled by the Respondent's pharmacist, presented ''red flags,'' and the prescriptions had no notations demonstrating that the ''red flags'' were resolved prior to the dispensing of the controlled substances. [Tr. 67]. The prescription on December 9, 2010, should not have been dispensed. [Tr. 67].

Lastly, Dr. Witte reviewed three prescriptions containing controlled substances written for the same patient, who was also an employee of the Respondent. The patient had a prior conviction for drug distribution, and such prescriptions would raise ''red flags.'' [Tr. 67–68; Gov't Exh. 4 at 84–89, Gov't Exh. 10]. The fact that the prescriptions contained multiple medications, and that the patient only filled some of the controlled substances, Dr. Witte found these ''red flags'' should have been resolved prior to dispensing the controlled substances. The patient's criminal conviction for drug distribution would add another ''red flag'' for these prescriptions. [Tr. 68]. The prescriptions did not contain any annotation that the pharmacist resolved the ''red flags'' prior to dispensing the controlled substances. In Dr. Witte's view, these controlled substances should not have been dispensed in this manner. [Tr. 68–69].

Overall, Dr. Witte opined that the Respondent did not exercise its corresponding responsibility to ensure that prescriptions for controlled substances were issued for a legitimate medical purpose. [Tr. 69].

D. Prescription Issues

After reviewing the prescriptions found in Government Exhibit 3, DI Ramirez credibly testified that she found six instances when the controlled substances were filled and the non-controlled substances were not filled. [Tr. 111]. Mr. Lekwa stated that for one of those prescriptions, he had called the doctor concerning the prescription. He had placed his notes from the call in the computer, not on the back of the prescription. [Tr. 205–08; Gov't Exh. 3 at 16].

Further, DI Ramirez found five examples in Government Exhibit 3 of prescriptions that did not contain a signature from the prescribing practitioner. [Tr. 114]. DI Ramirez also found approximately 44 prescriptions in Government Exhibit 3 that failed to contain a patient address. [Tr. 115–16]. She also found approximately 11 prescriptions in Government Exhibit 3 that had a missing or incorrect DEA number. [Tr. 116]. DI Ramirez also found 4 prescriptions where the name on the front of the prescription for controlled substances did not match the name on the dispensing label. [Tr. 117–19; see also Tr. 121–22, Gov't Exh. 4 at 192–93].

After reviewing Government Exhibit 4, DI Ramirez found approximately 125 prescriptions for controlled substances without a patient address. [Tr. 124]. This exhibit also contained approximately 157 prescription labels for controlled substances that identified the wrong prescribing practitioner. [Tr. 116–17, 124–25; Gov't Exhs. 3, 4]. There were also 22 prescriptions for controlled substances that either had a missing or incorrect prescriber DEA number. [Tr. 125].

DI Ramirez also credibly testified that 98 prescriptions purportedly from a Dr. Leo Edwards had a signature stamp rather than a manual signature. [Tr. 141–44; Gov't Exh. 8, 9]. When asked by DI Ramirez, Dr. Edwards confirmed that he had used a signature stamp on his prescriptions. [Tr. 144; Gov't Exh. 8, 9].

On at least 22 occasions, the Respondent's personnel filled controlled substance prescriptions and then returned the original paper prescriptions to the customer. [Tr. 109–10; Gov't Exh. 3 at 5, 11, 13, 19, 28, 35, 37, 39, 41, 43, 45, 47, 53, 70, 75, 76, 78, 82, 84, 90, 92, and 104].

DI Ramirez found several instances in which controlled substances were provided to customers without any valid prescription whatsoever for that individual. For example, Respondent's personnel distributed alprazolam to customer T.J., but the only record attached to the prescription label was a prescription for hydrocodone issued to customer R.S. [Tr. 117; Gov't Exh. 3 at 99–100; *see also* Tr. 118–19, 121–22; Gov't Exh. 3 at 103, 111; Tr. 121–22; Gov't Exh. 4 at 192–93].

DI Ramirez did not discover any evidence of any outright forged or fraudulent prescriptions. [Tr. 168]. She also did not identify any clientele that were coming from out of state. [Tr. 168].

E. The Audit

On the date that the Administrative Inspection Warrant was served, November 9, 2011, DI Ramirez conducted an audit of different dosages of controlled substances. [Tr. 136, 159; Gov't Exh. 13]. The starting point for the audit was the Respondent's inventory of October 30, 2010 [21], and the ending date of the audit was November 8, 2011. [Gov't Exh. 13]. DI Ramirez took a count of seven different strengths of controlled substances that were on-hand at the pharmacy on the date of the audit. She also added the receipts of each dosage for the audit timeframe to get a ''total accounted for'' amount. [Tr. 137; Gov't Exh. 13]. Next, DI Ramirez obtained sales and distribution records for the dosages of controlled substances sold and added that figure to the total on-hand on the day of the audit to show what the pharmacy could account for in their records. As a result of this audit, the Respondent had an overage of 445 Methodone 10 mg. tablets, a shortage of 27,344 ml. of Promethazone with codeine (or 929 ounces), an overage of 1,508 Hydrocodone 5 mg. tablets, an overage of 18,721 Hydrocodone 7.5 mg. tablets, a shortage of 3,445 Hydrocodone 10 mg. tablets, a shortage of 43,359 Alprazalam 1 mg. tablets, and a shortage of 7,769 Alprazalam 2 mg. tablets. [Tr. 138–140; Gov't Exh. 13]. DI Ramirez did not discuss these results with Mr. Lekwa, Respondent's owner. [Tr. 139]. At the hearing, Mr. Lekwa gave no explanation for these discrepancies.

[21] DI Ramirez confirmed that an annual inventory was conducted at the Respondent pharmacy. When DI Ramirez executed the Administrative Inspection Warrant, Mr. Lekwa, owner of the Respondent, was in the process of conducting his annual inventory. [Tr. 161].

F. Recordkeeping Deficiencies

When DI Ramirez reviewed the Respondent's receiving invoices, she noted that the dates of the receipt of the controlled substances and verification of the quantities received were missing. [Tr. 146; Gov't Exh. 5]. Of these eight invoices, there were 19 entries for controlled substances, and the required annotations were lacking. [Tr. 146; Gov't Exh. 5]. This pattern was repeated for other invoices. [Tr. 148–51; Gov't Exh. 6, 7]. Also, in looking at the DEA 222 forms, which are used to record the receipt of Schedules I and II controlled substances, DI Ramirez also noted that the forms lack what was received, the quantity received, and the date that the controlled substances were received by the pharmacy. [Tr. 152; Gov't Exh. 12].

G. Hiring of a Prior Felon

A.G. worked for the Respondent from 2008 to September of 2013. [Tr. 14; Gov't Exh. 11, 14]. He worked as a delivery driver, and he delivered controlled substances as part of his work responsibilities. [Tr. 15, 127–28].

In 1989, A.G. was convicted of distribution of crack cocaine. [Tr. 15–16]. This was a felony conviction. [Tr. 16, 1321–33; Gov't Exh. 10].

Mr. Lekwa asked A.G. to retrieve a document showing his criminal conviction, and A.G. went to the Texas Department of Public Safety and obtained a document that he subsequently provided to Mr. Lekwa. [Tr. 16, 20; Resp't Exh. 1]. The document related that ''The criminal history record file of the San Antonio Police Department did not reveal at this time any arrest information on the above-named individual.'' [Resp't Exh. 1]. However, A.G.'s conviction occurred in Waco, Texas. [Tr. 24].

At the hearing, Mr. Lekwa admitted that he had not contacted the City of San Antonio Police Department or any county in the state of Texas to get a criminal background check on A.G. [Tr. 202].

In July of 2013, DI Ramirez told Mr. Lekwa about A.G.'s conviction, but Mr. Lekwa continued to employ A.G. until September of 2013. [Tr. 132].

H. Mr. Lekwa

Mr. Lekwa, the pharmacist in charge and the owner of the Respondent, graduated from Texas Southern University in 1993. [Tr. 181]. English is a second language for him. [Resp't Br. at 18]. He is licensed in Texas as a pharmacist. [Tr. 182]. He worked for Walgreens for ten years, first as a pharmacist and then as a pharmacy manager. [Tr. 181]. He opened the Respondent in 2003. [Tr. 186]. The Respondent is a franchise, and the franchise agreement provided that the company would do the site layout, would provide financing at a low interest rate, would assist in marketing the Respondent, and would provide training. The company also has consultants for the Respondent to consult. [Tr. 187–88].

Mr. Lekwa hired a permanent pharmacist, rather than using relief pharmacists like in the past. [Tr. 189]. He also trains the pharmacy technicians to ensure they follow

the DEA requirements. [Tr. 189]. Specifically, he requires the technicians to put the address and phone number on the front of a prescription prior to filling it. [Tr. 190]. As for prescriptions for ''drug cocktails,'' Mr. Lekwa stated that his new procedure is to confirm the prescription with the prescribing practitioner, to annotate that confirmation on the prescription, and to ask the practitioner to fax the diagnosis to the pharmacy. [Tr. 190–91].

Mr. Lekwa also trained his personnel who sign for the receipt of controlled substances to fill out the paperwork completely at the time the controlled substances are actually received, rather than to wait until the end of the month to reconcile the receipts. [Tr. 190].

Mr. Lekwa has served many of his customers for the past ten-plus years. [Tr. 193]. Most of Mr. Lekwa's clients are elderly and use Medicaid or Medicare for their prescriptions. [Tr. 192]. Some of his customers do not have insurance. [Tr. 192]. Because of money constraints, some of his customers request to fill part of their prescription on one day and to return another day to purchase the rest of the medication. [Tr. 192]. Now Mr. Lekwa advises such customers that the patient has to have the means to purchase all of their prescribed medication at one time. [Tr. 192].

Also, Mr. Lekwa acknowledged that he returned the original prescriptions in some cases to the customer. [Tr. 193–94]. He credibly testified that he was not doing this practice now. [Tr. 194–95].

Mr. Lekwa has never been the subject of an investigation or disciplinary action by any state board. [Tr. 182].

Mr. Lekwa acknowledged that mistakes were made at the Respondent pharmacy. [Tr. 184, 220, 223]. Specifically, after he understood the true nature of A.G.'s criminal record, he fired him. [Tr. 185–86]. He also instructed his personnel to make sure the patient's address and phone number are on the front of the prescription. [Tr. 220]. Mr. Lekwa also testified that he did not send DEA any kind of correspondence indicating that he accepted responsibility for any kind of misconduct. [Tr. 200]. Mr. Lekwa testified that he instituted new policies and procedures. Specifically he reviews the Medicine Shoppe manual with each of his employees. He also keeps the manual updated.[22] [Tr. 214–15].

IV. CONCLUSIONS OF LAW AND DISCUSSION

A. Position of the Parties

1. The Government's Position

The Government seeks revocation of the Respondent's Certificate of Registration because to continue its registration would be against the public interest. [Gov't Br. at 30]. Specifically, the Government argues that DEA is bound by agency precedent to revoke Respondent's DEA registration. Citing to DEA final orders, the Government asserts that the Respondent violated state and Federal law by failing to exercise its corresponding responsibility to ensure that prescriptions for controlled substances are issued for a legitimate medical purpose, as required by the Controlled Substances Act and the implemented regulations. [Gov't Br. at 13]. The Government further argued that the Respondent repeatedly filled facially invalid prescriptions, failed to maintain adequate records, and failed to keep an accurate inventory of the controlled substances it purchased. [Gov't Br. at 13–14]. Lastly, the Respondent violated Federal law by employing a convicted drug felon in a position where the felon had access to controlled substances. [Gov't Br. at 14].

Next, the Government asserts that the Respondent dispensed controlled substances despite the unresolved red flags. [Gov't Br. at 14]. Specifically, the Government argues that the Respondent's personnel distributed controlled substances pursuant to prescriptions that contained one or more unresolved ''red flags.'' Dr. Witte's testimony establishes this fact. [Gov't Br. at 14–16].

Additionally, the Government argues that the Respondent's failure to keep accurate records violated Federal statutory and regulatory provisions that require an accurate inventory of controlled substances. [Gov't Br. at 16]. The inadequacy of the Respondent's system is evidenced by the audit conducted by the DEA resulting in large shortages and overages. [Gov't Br. at 17]. The Respondent's records were also deficient because Mr. Lekwa failed correctly to record complete invoices of controlled substances received. [Gov't Br. at 17–18]. Lastly, the Respondent, by permitting customers to retain their original prescriptions, violated Federal regulations that require the Respondent to maintain the paper prescription for Schedules III, IV, and V controlled substances at the registered location. [Gov't Br. at 18].

The Government also argues that the Respondent violated DEA regulations by hiring A.G., a felon convicted of a drug-related crime, and by failing to do a proper and thorough background check. [Gov't Br. at 19]. Also, the Respondent failed to prove that it accepted responsibility for its actions or to demonstrate that it will not engage in future misconduct. Further, a Respondent's lack of candor and inconsistent explanations may serve as a basis for denial of a registration. [Gov't Br. at 20–24].

The Government asserts that the Respondent's practices significantly increased the risk of diversion. [Gov't Br. at 24]. Further, the Respondent has provided insufficient evidence of facts that demonstrate mitigating circumstances. [Gov't Br. at 25].

Lastly, the Government argues that Mr. Lekwa's testimony was not credible and should be given no weight. [Gov't Br. at 28]. The Government states that ''[n]otwithstanding the confusing and contradictory nature of his testimony, Mr. Lekwa's wholesale failure to produce a single written document to support his position militates in favor of finding him to be an incredible witness. . . . Mr. Lekwa has also testified in a manner that was non-responsive, evasive, and internally inconsistent.'' [Gov't Br. at 29].

In light of all of the above, the Government requests that I recommend that the Respondent's Certificate of Registration should be revoked. [Gov't Br. at 30].

2. The Respondent's Position

The Respondent asserts that its Certificate of Registration should not be revoked and any pending applications for renewal should be granted. [Resp't Br. at 23]. First, Respondent asserts that it holds a valid license in the State of Texas, and the State has not made a recommendation in this matter. Thus, factor one of the statutory provision is not an impediment to the Respondent's keeping his registration. [Resp't Br. at 6].

As for factor three, the Respondent states that the record does not contain evidence that the Respondent, its owner, or any pharmacist or key employee of the pharmacy has been convicted of a crime related to the manufacture, distribution, or dispensing of controlled substances. [Resp't Br. at 7].

As for factor two, the Respondent asserts that neither the Respondent, Mr. Lekwa nor any other pharmacist or pharmacy technician employed by Respondent has ever been investigated, disciplined or charged with any violation of state or federal administrative, regulatory, or criminal law. [Resp't Br. at 7].

As for factor four, the Respondent admitted that the Government has met its burden of proof and has shown by a preponderance of the evidence that the Respondent has committed acts inconsistent with the public interest. [Resp't Br. at 8]. Mr. Lekwa testified that the Respondent accepted responsibility for its misconduct. Then he asserted that a qualitative assessment of the Respondent's current practices should occur to determine whether or not sufficient corrective action has been taken to prevent similar occurrences of future misconduct. [Resp't Br. at 8–9].

The Respondent then analyzes the difference between resolvable and unresolvable red flags. As for resolvable red flags, the Respondent asserts that such indicators may be resolved through discussions with patients and prescribers, as well as through the pharmacist's own knowledge of the patient's past history as a customer. [Resp't Br. at 10]. Unresolvable red flags are situations in which ''no amount of information gathered or verification made by the pharmacist could foresee any explanation that would satisfy a Pharmacist's corresponding responsibility under federal law not to fill the scripts.'' [Resp't Br. at 10]. He concludes that ''[r]esolvable red flags, if resolved, are lawful prescriptions. Unresolvable red flags are illegal and substantial evidence of drug diversion.'' [Resp't Br. at 11]. The ''type of red flags that support a finding that Respondent's pharmacists repeatedly and intentionally dispensed prescriptions are those where they had reason to know that the prescriptions lacked a legitimate medical purpose and were issued outside of the usual course of professional practice.'' [Resp't Br. at 12].

The Respondent asserts that now there are policies and procedures in place at Respondent to correct missing or incomplete data on prescriptions. [Resp't Br. at 12]. For example, the Respondent has hired another

[22] The Government made the point that Mr. Lekwa did not bring the manual to the hearing or place it into the record. [Tr. 216].

pharmacist to supervise employees in Mr. Lekwa's absence, and has obtained an independent audit of all records relating to the inventory, to include purchasing, storing, dispensing and recordkeeping practices of the Respondent. [Resp't Br. at 14]. Mr. Lekwa has instituted additional training regimen, has conducted FBI criminal background checks on all of his employees, and has implemented a policy whereby all of the prescribed drugs or none of the prescribed drugs will be dispensed per prescription. [Resp't Br. at 14].

Yet, Mr. Lekwa admits that he dispensed drugs for prescriptions that were suspicious and not resolvable. The Respondent affirms that calling the physician does not immunize the Respondent from its duty to ensure the prescriptions are for a legitimate medical purpose. [Resp't Br. at 13].

The Respondent cites DEA precedent for the proposition that the DEA ''has declined to revoke a registration where non-egregious recordkeeping errors were acknowledged by the pharmacy PIC and remedied promptly.'' *Terese, Inc., d/b/a Peach Orchard Drugs,* 76 Fed. Reg. 46,843, 46,848 (DEA 2011).[23] He then asserted that the flaws in the biannual inventory were non-egregious flaws. Further, the error of receipts and invoices lacking necessary date, acknowledged by the Respondent, was non-egregious. [Resp't Br. at 17].

Next, the Respondent argues that its ''acceptance of responsibility was . . . significant and deserving of great weight and consideration since it occurred before the hearing and presentation of the evidence.'' [Resp't Br. at 17]. It has presented sufficient mitigating evidence to assure the Administrator that it can be entrusted with the responsibility of a continued registration, the Respondent asserts. [Resp't Br. at 17–18]. According to Respondent, ''[t]he evidence shows that the Respondent's continued registration would not threaten the public safety.'' [Resp't Br. at 20].[24] In conclusion, the Respondent asserts that although the Government has met its burden of proof, ''the evidence further shows that Respondent will not commit future acts of misconduct making its continued registration consistent with the public interest.'' [Resp't Br. at 23].

B. Statement of Law and Discussion

Pursuant to 21 U.S.C. § 824(a)(4), the Deputy Administrator[25] may revoke a registration, and deny a pending application for renewal or modification, if he determines that the continuation or issuance of such registration would be ''inconsistent with the public interest'' as determined pursuant to 21 U.S.C. § 823(f). Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. § 823(f); *see also Alexander Drug Co.,* 66 Fed. Reg. 18,302 (DEA 2001); *Nicholas A. Sychak, d/b/a Medicap Pharmacy,* 65 Fed. Reg. 75,959, 75,967 (DEA 2000). These factors may be considered in the disjunctive: The Deputy Administrator may properly rely on any one or a combination of these factors, and may give each factor the weight he deems appropriate, in determining whether a registration should be revoked or an application for registration denied. *Liddy's Pharmacy, L.L.C.,* 76 Fed. Reg.48,887, 48,893 (DEA 2011) (citing *Hoxie v. DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *Morall v. DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005)); *Robert A. Leslie, M.D.,* 68 Fed. Reg. 15,227, 15,230 (DEA 2003).

Factors two and four are relevant.

Further, in an action to revoke a registrant's certificate, the DEA has the burden of proving that the requirements for revocation are satisfied. 21 C.F.R. § 1301.44(e). The burden of proof then shifts to the Respondent once the Government has made its prima facie case. *Arthur Sklar, R.Ph., d/b/a King Pharmacy,* 54 Fed. Reg. 34,623, 34,627 (DEA 1989). Specifically, after the Government ''has proved that a registrant has committed acts inconsistent with the public interest, a registrant must 'present sufficient mitigating evidence to assure the Administrator that [the Respondent] can be entrusted with the responsibility carried by such a registration.''' *Medicine Shoppe,* 73 Fed. Reg. at 387 (quoting *Samuel S. Jackson,* 72 Fed. Reg. 23,848, 23,853 (DEA 2007) (quoting *Leo R. Miller,* 53 Fed. Reg. 21,931, 21,932 (DEA 1988)). ''Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs, Inc. v. DEA,* 54 F.3d 450, 452 (7th Cir. 1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [its] actions and demonstrate that [it] will not engage in future misconduct.'' *Medicine Shoppe,* 73 Fed. Reg. at 387; *see also Jackson,* 72 Fed. Reg. at 23,853*; John H. Kennedy,* 71 Fed. Reg. 35,705, 35,709 (DEA 2006); *Prince George Daniels,* 60 Fed. Reg. 62,884, 62,887 (DEA 1995); *See also Hoxie v. DEA,* 419 F.3d 477, 483 (6th Cir. 2005) (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor'' in the public interest determination)].

1. Prescriptions

Pursuant to the Controlled Substances Act and its implementing regulations, a pharmacy, a prescription-dispensing registrant, has a corresponding responsibility, along with the physician, a prescription-issuing registrant, to ensure the prescription is valid. 21 C.F.R. § 1306.04(a). When considering whether a pharmacy has violated its corresponding responsibility, the Agency considers whether the entity, not the pharmacist, can be charged with the requisite knowledge. *Holiday CVS, L.L.C., d/b/a CVS Pharmacy Nos. 219 and 5195,* 77 Fed. Reg. 62316 (DEA 2012) [hereinafter *CVS*]; *see also United Prescription Services,* 72 Fed. Reg. at 50,407; *Pharmboy Ventures Unlimited, Inc.,* 77 Fed. Reg. 33,770, 33,772 n.2 (DEA 2012) (''DEA has long held that it can look behind a pharmacy's ownership structure 'to determine who makes decisions concerning the controlled substance business of a pharmacy.'''); *S&S Pharmacy, Inc.,* 46 Fed. Reg. 13051, 13052 (DEA 1981) (''the corporate pharmacy acts through the agency of its pharmacist in charge''). Knowledge obtained by the pharmacists and other employees acting within the scope of their employment may be imputed to the pharmacy itself. *See U.S. v. One Parcel of Land,* 965 F.2d 311, 316 (7th Cir. 1992) (''Only knowledge obtained by corporate employees acting within the scope of their employment is imputed to the corporation.'').

The applicable regulations state that the test for the proper prescribing and dispensing of controlled substances is as follows:

A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

21 C.F.R. § 1306.04(a). Thus, for a prescription to be lawful, it needs to be written for a legitimate medical purpose in the practitioner's usual course of professional practice. *Id.* The pharmacist has a corresponding responsibility to verify the validity of a prescription, and if a prescription seems suspect, the pharmacist has a duty to investigate the prescription to determine its legitimacy. *See CVS,* 77 Fed. Reg. at 62,340–41. The corresponding responsibility to ensure the dispensing of valid prescriptions extends to the pharmacy itself. *Medicine Shoppe-Jonesborough,* 73 Fed. Reg. at 384 (finding that a respondent pharmacy was properly charged with violating corresponding responsibility); *United Prescription Services, Inc.,* 72 Fed. Reg. 50397, 50407–08 (2007) (same). *EZRX, LLC,* 69 Fed. Reg. 63,178, 63,181 (DEA 2004) (''DEA has issued orders to show cause and subsequently revoked the DEA registrations of pharmacies which failed to fulfill their corresponding responsibility in Internet prescribing operations . . . .'')

DEA has consistently interpreted the prescription provision as prohibiting a pharmacist from filling a prescription for a controlled substance when he either ''knows or has reason to know that the prescription was not written for a legitimate medical purpose.'' *Medic-Aid Pharmacy,* 55 Fed. Reg.

[23] The Respondent asserts that Mr. Lekwa has hired a private company to conduct an annual inventory. This fact, however, is not part of the record and the Respondent did not cite any record source for this fact.

[24] The Respondent rebuts the Government's expert witness by asserting that her professional opinion was based upon incomplete information. [Resp't Br. at 20].

[25] The Deputy Administrator has the authority to make such determinations pursuant to 28 C.F.R. §§ 0.100(b) and 0.104 (2009).

30,043, 30,044 (DEA 1990). *See also Frank's Corner Pharmacy,* 60 Fed. Reg. 17,574, 17,576 (DEA 1995); *Ralph J. Bertolino, d/b/a Ralph J. Bertolino Pharmacy,* 55 Fed. Reg. 4,729, 4,730 (DEA 1990) [hereinafter *Bertolino*]; *United States v. Seelig,* 622 F.2d 207, 213 (6th Cir. 1980). This Agency has further held that ''[w]hen prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby avoid [actual] knowledge of the real purpose of the prescription.'' *Bertolino,* 55 Fed. Reg. at 4,730 (citations omitted); *see also Sun & Lake Pharmacy, Inc.,* 76 Fed. Reg. 24,523, 24,530 (DEA 2011); *Liddy's Pharmacy, L.L.C.,* 76 Fed. Reg. at 48,893; *East Main Street Pharmacy,* 75 Fed. Reg. 66,149, 66,163 (DEA 2010); *Lincoln Pharmacy,* 75 Fed. Reg. 65,667, 65,668 (DEA 2010); *Bob's Pharmacy,* 74 Fed. Reg. 19,599, 19,601 (DEA 2009). However, the DEA does not require omniscience. *Carlos Gonzalez,* 76 Fed. Reg. 63,118, 63,142 (DEA 2011) (citing *Holloway Distrib.,* 72 Fed. Reg. 42,118, 42,124 (DEA 2007)).

Yet, when an attempted transaction would give rise to suspicion in a ''reasonable professional,'' there is a duty to ''question the prescription[].''*Bertolino,* 55 Fed. Reg. at 4730. The ''reasonable professional'' has been further developed into the ''reasonable pharmacist'' standard. *East Main Street Pharmacy,* 75 Fed.Reg. at 66165; *see also Winn's Pharmacy,* 56 Fed.Reg. 52559, 52561 (DEA 1991). Accordingly, a pharmacist or pharmacy may not dispense a prescription in the face of a red flag (i.e., a circumstance that does or should raise a reasonable suspicion as to the validity of a prescription) unless he or it takes steps to resolve the red flag and ensure that the prescription is valid. *East Main Street Pharmacy,* 75 Fed. Reg. at 66,165. Because Agency precedent limits the corresponding responsibility to circumstances which are known or should have been known, *Sun & Lake Pharmacy, Inc.,* 76 Fed. Reg. at 24,530, it follows that, to show a violation of a corresponding responsibility, the Government must establish that: ''(1) The Respondent dispensed a controlled substance; (2) a red flag was or should have been recognized at or before the time the controlled substance was dispensed; and (3) the question created by the red flag was not resolved conclusively prior to the dispensing of the controlled substance.'' *CVS,* 77 Fed. Reg. at 62316; *see also Sun & Lake Pharmacy,* 76 Fed. Reg. at 24,532 (finding that pharmacy violated corresponding responsibility when it took no steps to resolve red flags prior to dispensing controlled substances.). The steps necessary to resolve the red flag conclusively is dependent upon the nature of the specific red flag. *CVS,* 77 Fed. Reg. at 62,341.

In support of its allegation that the Respondent has violated its corresponding responsibilities, the Government has introduced evidence that the Respondent pharmacy: (1) dispensed controlled substances without a prescription; (2) dispensed controlled substances when the prescription was ''signed'' using a signature stamp; (3) allowed customers to retain the original controlled substances prescriptions; (4) dispensed controlled substances when the prescription contained irregular dosing instructions; (5) dispensed controlled substances when the prescriptions revealed ''pattern prescribing'' by the physician; (6) dispensed controlled substances when the prescription lacked a patient's address and the physician's DEA registration number; (7) placed a prescription label on the back of the prescription with a physician's name that is not consistent with the name on the front of the prescription; (8) accepted prescriptions where the refill line was blank; and (9) allowed patients with prescriptions containing both controlled and non-controlled substances to fill only the controlled substances' portion of the prescription.

Further, the Respondent also violated state law, which prohibits dispensing controlled substances pursuant to prescriptions that lack a correct DEA registration number, patient address, or prescriber's signature. *See* Tex. Health & Safety Code Ann. § 481.074; Tex. Admin. Code § 13.75.[26]

The record contains no evidence that these ''red flags'' were resolved prior to the dispensing of the controlled substances. A preponderance of the evidence proves that the Respondent violated its corresponding responsibility in the way it dispensed controlled substances pursuant to these defective prescriptions.

2. Recordkeeping Deficiencies

Further, ''[r]ecordkeeping is one of the CSA's central features,'' and ''a registrant's accurate and diligent adherence to this obligation is absolutely essential to protect against the diversion of controlled substances.'' *Paul H. Volkman,* 73 Fed. Reg. 30,630, 30,644 (DEA 2008), *aff'd* 567 F.3d 215, 224 (6th Cir. 2009). The statute provides that ''it shall be unlawful . . . to refuse or negligently fail to make, keep, or furnish any record, notification, declaration, order or order form, statement, invoice or information required.'' 21 U.S.C. 842(a)(5). The implementing regulations require that a dispensing registrant must maintain accurate records that include ''the number of units or volume of such finished form dispensed, including the name and address of the person to whom it was dispensed, the date of dispensing, the number of units or volume dispensed, and the written or typewritten name or initials of the individual who dispensed'' the controlled substance. 21 C.F.R. § 1304.22(c).

Here, the Respondent's recordkeeping was deficient. The Government presented evidence that the Respondent's invoices were incomplete, and the DEA 222 forms lacked a notation of what was received, the quantity of the controlled substance received, and the date the controlled substance was received by the pharmacy. 21 C.F.R. § 1305.13.[27] Without such records, the pharmacy would be unable to produce an accurate inventory or audit.

DEA, however, attempted to conduct an audit of the Respondent. The results were telling, for the Respondent was unable to accurately account for 27,344 ml. of Promethazone with codeine (or 929 ounces), 1,508 Hydrocodone 5 mg. tablets, 18,721 Hydrocodone 7.5 mg. tablets, 3,445 Hydrocodone 10 mg. tablets, 43,359 Alprazalam 1 mg. tablets, and 7,769 Alprazalam 2 mg. tablets. This inability to account for this significant number of dosage units creates a grave risk of diversion. *Medicine Shoppe,* 73 Fed. Reg. at 367 (finding any amount over 50 dosage units a significant amount); *see also Paul H. Volkman,* 73 Fed. Reg. 30630, 30644 (DEA 2008), *pet. for rev. denied* 567 F.3d 215, 224 (6th Cir. 2009) (finding that ''a registrant's accurate and diligent adherence to this obligation is absolutely essential to protect against the diversion of controlled substances''). The DEA has also held that it need not find that diversion was the cause of the unaccounted dosage units, to conclude that the Respondent does not maintain effective controls against diversion. *Jack A. Danton, D.O.,* 76 Fed. Reg. 60,900, 60,919 (DEA 2011) (citations omitted). Because the records provided to the DEA failed to correctly record what was accurately received and dispensed, such recordkeeping errors contributed ''to the inability of the Respondent and subsequently the DEA to conduct an accountability audit with accurate results,'' and, thus, violated Federal law. *Jack A. Danton* 76 Fed. Reg. at 60,919.

3. Hiring of a Convicted Felon

DEA regulations provide that a registrant ''shall not employ, as an agent or employee who has access to controlled substances, any person who has been convicted of a felony offense relating to controlled substances.'' 21 C.F.R. § 1301.76(a). Further, the Respondent had a duty to conduct an inquiry concerning any convictions its employees may have on their record. 21 C.F.R. § 1301.90.

Here, the Respondent hired an individual who had a felony conviction for distributing crack cocaine to deliver prescribed drugs, to include controlled substances. Prior to employing this individual, Mr. Lekwa told him to obtain documentation of his criminal record, and A.G. opted to get a criminal background report from the City of San Antonio. This was an insufficient background check, for the applicant had a felony conviction in Waco, Texas, not San Antonio.[28] Indeed, the report itself states that

[26] These statutory and regulatory requirements provide in relevant part that a prescription for a controlled substance must show the quantity of the substance prescribed, the date of the issue, the name, address, and date of birth or age of the patient, the name and strength of the controlled substance prescribed, the directions for use, the name, address, DEA number, and telephone number of the practitioner at the practitioner's usual place of business, and, if the prescription is handwritten, the signature of the prescribing practitioner. Tex. Health & Safety Code Ann. § 481.074.

[27] This regulation provides in relevant part that the pharmacy, as the purchaser, must record on the DEA Form 222 the number of commercial containers furnished on each item, and the dates on which the containers were received.

[28] There was testimony challenging whether the applicant told Mr. Lekwa about his conviction prior to his being hired. I find this irrelevant. The legal point is that Mr. Lekwa did not perform an adequate background check prior to hiring this individual.

it does not include A.G.'s criminal history in any other jurisdiction. [Resp't Exh. 1]. Again, the Government has proved by a preponderance of the evidence that the Respondent violated DEA regulations.

Thus, the burden of production now shifts to the Respondent to demonstrate that it takes full responsibility for its unlawful conduct and that it has put in place remedial measures so that such violations will not happen in the future. *Medicine Shoppe,* 73 Fed. Reg. at 387 (quoting *Samuel S. Jackson,* 72 FR 23,848, 23,853 (DEA 2007)) (holding that a registrant must ''present sufficient mitigating evidence to assure the Administrator that [it] can be entrusted with the responsibility carried by such a registration''); *Leo R. Miller,* 53 Fed. Reg. 21,931, 21,932 (DEA 1988).

On direct examination, Mr. Lekwa took full responsibility for any misconduct attributable to the Respondent. However, on cross examination, Mr. Lekwa presented testimony inconsistent with other testimony in the record. First, he denied that A.G., at the time of his employment interview, told him about his felony conviction for distribution of crack cocaine. A.G. testified to the contrary. Further, DI Ramirez testified that, in July of 2013, she had told Mr. Lekwa about A.G.'s felony conviction, yet Mr. Lekwa denied having this conversation with DI Ramirez. Rather, Mr. Lekwa testified that he had a conversation in September 2013 with DI Ramirez's supervisor. That was when he first learned of the felony conviction, he asserted.

Next, Mr. Lekwa seemed to deny that there was any misconduct when the prescription containing both controlled substance and non-controlled substance entries, as well as a notation of ''all or none,'' was filled by only distributing the controlled substance. Rather, Mr. Lekwa testified that he had contacted the doctor and received permission to fill the prescription in that manner. Yet the record contains no evidence of this verification action. This inconsistent testimony certainly calls into question Mr. Lekwa's genuine remorse for the misconduct proved by the Government.

As for remedial measures, the record contains unrefuted evidence that Mr. Lekwa fired A.G. in September of 2013. Also, Mr. Lekwa testified that he now trains each employee on the procedures to follow in filling a controlled substance prescription. He announced that there was a training manual to help with this training. However, on cross examination Mr. Lekwa stated that the manual was the one the franchise company provided. Although he kept the manual current, there is no evidence that he altered procedures to come into compliance with legal requirements. Rather, Mr. Lekwa testified that the manual was not deficient, but the implementation of the manual provisions was lacking prior to the Order to Show Cause being served. Arguably, this new training would be a meaningful remedial measure. But the record contains no excerpts from the manual to bolster the adequacy of this training.

Next, Mr. Lekwa testified that when he receives a prescription containing a ''drug cocktail,'' he now requires the physician to fax to him confirmation of the diagnosis that resulted in this kind of prescribing. Unfortunately, the record contains no evidence that this procedure has been successfully implemented.

V. CONCLUSION AND RECOMMENDATION

Given the extent of the misconduct and the unreliability of the testimony concerning the acceptance of responsibility, I conclude that the Respondent's registration should be revoked. Accordingly, that is my recommendation based on this record.

Dated: March 24, 2014

Gail A. Randall

Administrative Law Judge

[FR Doc. 2014–23473 Filed 10–1–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the National Crime Prevention and Privacy Compact Council (Council) created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the Federal Government and 30 states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative federal-state system to exchange such records.

The United States Attorney General appointed 15 persons from state and federal agencies to serve on the Council. The Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system for noncriminal justice purposes.

Matters for discussion are expected to include:

(1) Civil Fingerprint Image Quality Pilot Program Update

(2) Changes to the Security and Management Control Outsourcing Standards for Channelers and Non-Channelers

(3) National Crime Prevention and Privacy Compact Ratification—Discussion of Ideas to Assist Nonparty States

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Council or wishing to address this session of the Council should notify the Federal Bureau Of Investigation (FBI) Compact Officer, Mr. Gary S. Barron at (304) 625–2803, at least 24 hours prior to the start of the session. The notification should contain the individual's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed and the time needed for the presentation. Individuals will ordinarily be allowed up to 15 minutes to present a topic.

DATES: The Council will meet in open session from 9 a.m. until 5 p.m., on November 5–6, 2014.

ADDRESSES: The meeting will take place at the Sheraton Atlanta Hotel, 165 Courtland Street NE., Atlanta, Georgia, telephone (404) 659–6500.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. Gary S. Barron, FBI Compact Officer, Module D3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, telephone (304) 625–2803, facsimile (304) 625–2868.

Dated: September 23, 2014.

Gary S. Barron,

FBI Compact Officer, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 2014–23463 Filed 10–1–14; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may

request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 14, 2014.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 14, 2014.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 18th day of September 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[18 TAA petitions instituted between 9/8/14 and 9/12/14]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
85518	Scherer & Trier (State/One-Stop)	Saline, MI	09/08/14	09/05/14
85519	New England Paper Tube Co., Inc. (Company).	Pawtucket, RI	09/08/14	09/02/14
85520	Swisher International, Inc. (Company)	Jacksonville, FL	09/09/14	09/08/14
85521	Civco Medical Solutions (State/One-Stop)	Kalona, IA	09/09/14	09/08/14
85522	II–VI Marlow (Company)	Dallas, TX	09/09/14	09/08/14
85523	Katzkin Leather, Inc. (State/One-Stop)	Montebello, CA	09/09/14	09/08/14
85524	Sunspring America, Inc. (Company)	Henderson, KY	09/10/14	08/19/14
85525	Amgen Inc. (State/One-Stop)	Thousand Oaks, CA	09/10/14	08/19/14
85526	Finck Cigar Co. (Workers)	San Antonio, TX	09/10/14	08/25/14
85527	Syncreon Technology America, Inc. (Company).	Allentown, PA	09/11/14	09/10/14
85528	Boston Scientific Corporation (State/One-Stop).	San Clemente, CA	09/11/14	09/10/14
85529	SANYO Manufacturing Corp (Company)	Forrest City, AR	09/11/14	09/10/14
85530	Shure Inc. (Workers)	El Paso, TX	09/11/14	09/10/14
85531	Regal Beloit (Company)	Springfield, MO	09/11/14	09/10/14
85532	Pacific Interpreters (State/One-Stop)	Portland, OR	09/12/14	09/11/14
85533	Modine Manufacturing (State/One-Stop)	Ringwood, IL	09/12/14	09/11/14
85534	Pendleton Grain Growers, Inc. (State/One-Stop).	Hermiston, OR	09/12/14	09/11/14
85535	UTI Integrated Logistics LLC (Workers)	El Paso, TX	09/12/14	09/04/14

[FR Doc. 2014–23481 Filed 10–1–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–83,321]

LATA Environmental Services Of Kentucky, LLC, A Wholly Owned Subsidiary of Los Alamos Technical Associates, Inc., Including On-Site Leased Workers From Babcock & Wilcox Technical Services Group and S.M. Stoller Corporation, Kevil, Kentucky; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 11, 2014, applicable to workers of LATA Environmental Services of Kentucky, LLC, a wholly owned subsidiary of Los Alamos Technical Associates, Inc., Kevil, Kentucky. The Department's notice of determination was published in the **Federal Register** on June 30, 2014 (79 FR 36827).

At the request of a former worker, the Department reviewed the certification for workers of the subject firm and the allegation that the worker group included on-site leased workers. The subject firm confirmed that workers leased from Babcock & Wilcox Technical Services Group and S.M. Stoller Corporation were employed on-site at the subject firm. The workers were engaged in environmental remediation services. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Babcock & Wilcox Technical Services Group and S.M. Stoller Corporation working on-site at LATA Environmental Services of Kentucky, LLC, a wholly owned subsidiary of Los Alamos Technical Associates, Inc., Kevil, Kentucky.

The amended notice applicable to TA–W–83,321 is hereby issued as follows:

''All workers of Babcock & Wilcox Technical Services Group and S.M. Stoller Corporation, reporting to LATA Environmental Services of Kentucky, LLC, a wholly owned subsidiary of Los Alamos Technical Associates, Inc., Kevil, Kentucky, who became totally or partially separated from employment on or after December 20, 2012 through June 11, 2016, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC this 10th day of September, 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–23483 Filed 10–1–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,121]

General Motors Company, Formerly Known as General Motors Corporation, Technical Center, Including On-Site Leased Workers From Aerotek, Bartech Group, CDI Professional Services, EDS/HP Enterprise Services, Engineering Labs, Inc., Global Technology Associates Limited, G-Tech Professional Staffing, Inc., Jefferson Wells, Kelly Services, Inc., Optimal, Inc., Populus Group, RCO Engineering, Inc., Tek Systems, Modern Engineering/Professional Services, General Physics Corporation, Entech, Pinnacle Technical Resources, Inc., and Dialog Direct (f/k/a BUDCO) Excluding Workers of the Global Purchasing and Supply Chain Division Warren, Michigan; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 30, 2010, applicable to workers of General Motors Company, formerly known as General Motors Corporation, Technical Center, including on-site leased workers from Aerotek, Bartech Group, CDI Professional Services, EDS/HP Enterprise Services, Engineering Labs, Inc., Global Technology Associates Limited, G-Tech Professional Staffing, Inc., Jefferson Wells, Kelly Services, Inc., Optimal, Inc., Populus Group, RCO Engineering, Inc., Tek Systems and Modern Engineering/Professional Services, excluding workers of the Global Purchasing and Supply Chain Division, Warren, Michigan. The Department's notice of determination was published in the **Federal Register** on May 28, 2010 (75 FR 30070).

At the request of the state, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the engineering and other technical support of automotive production at affiliated plants.

Further review revealed that workers leased from Dialog Direct (formerly known as BUDCO) were employed on-site at the Warren, Michigan location of General Motors Company, formerly known as General Motors Corporation, Technical Center. The Department has determined that on-site workers from Dialog Direct (formerly known as BUDCO) were sufficiently under the control of General Motors Company to be considered leased workers.

The amended notice applicable to TA–W–72,121 is hereby issued as follows:

''All workers of General Motors Company, formerly known as General Motors Corporation, Technical Center, including on-site leased workers from Aerotek, Bartech Group, CDI Professional Services, EDS/HP Enterprise Services, Engineering Labs, Inc., Global Technology Associates Limited, G-Tech Professional Staffing, Inc., Jefferson Wells, Kelly Services, Inc., Optimal, Inc., Populus Group, RCO Engineering, Inc., Tek Systems, Modern Engineering/Professional Services, General Physics Corporation, Entech, Pinnacle Technical Resources, Inc., and Dialog Direct (f/k/a BUDCO), excluding workers of the Global Purchasing and Supply Chain Division, Warren, Michigan, who became totally or partially separated from employment on or after August 14, 2008 through April 30, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC this 11th day of September, 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–23482 Filed 10–1–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *September 8, 2014 through September 12, 2014.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met:

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and

such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met:

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

85,328, Chromcraft Revington, Inc., Senatobia, Mississippi. May 21, 2013.
85,409, PolyOne Designed Structures & Solutions LLC, Cape Girardeau, Missouri. July, 2013.
85,410, B/E Aerospace, Inc., Lenexa, Kansas. July 1, 2013.
85,424, Berry Plastics Corporation, Kent, Washington. July 14, 2013.
85,453, Vital Signs, Inc., Totowa, New Jersey, July 29, 2013.
85,458, Arrow International Incorporated, Lumberton, New Jersey. July 31, 2013.
85,461, Wire Company Holdings, Inc., D.B.A New York New York, Hanover, Pennsylvania. October 17, 2014.
85,461A, Wire Company Holdings, Inc., D.B.A New York Wire, York, Pennsylvania. October 17, 2014.
85,461B, Wire Company Holdings, Inc., D.B.A New York Wire, York, Pennsylvania. October 17, 2014.
85,480, OEM Controls, Inc., Shelton, Connecticut. August 8, 2013.
85,481, Daimler Buses North America, Inc., Oriskany, New York, September 29, 2014.
85,493, STEMCO Crewson, Buffalo, New York. August 18, 2013.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

85,287, Quad/Graphics Marketing, LLC, Marengo, Iowa.
85,508, Electrodynamics, Inc., Rolling Meadows, Illinois.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

85,425, Intrepid Potash Inc., Carlsbad, New Mexico.
85,433, Wolff Fording and Company, Richmond, Virginia.
85,470, Elsevier, Inc., Maryland Heights, Missouri.
85,491, Citibank N.A., Jersey City, New Jersey.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

85,316, Honeywell Process Solutions—Mercury Instruments LLC, Cincinnati, Ohio.

I hereby certify that the aforementioned determinations were issued during the period of *September 8, 2014 through September 12, 2014.* These determinations are available on the Web site *www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington DC, this 18th day of September 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–23486 Filed 10–1–14; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL SCIENCE FOUNDATION

National Big Data R and D Initiative; Framework, Priorities, and Strategic Plan

AGENCY: The National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD).

ACTION: Request for Input (RFI).

FOR FURTHER INFORMATION CONTACT: Wendy Wigen at 703–292–4873 or *wigen@nitrd.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

DATES: To be considered, written comments must be received by November 14, 2014.

SUMMARY: This request encourages feedback from multiple big data stakeholders to inform the development of a framework, set of priorities, and ultimately a strategic plan for the National Big Data R&D Initiative. A number of areas of interest have been identified by agency representatives in the Networking and Information Technology Research and Development (NITRD) Big Data Senior Steering Group (BDSSG) as well as the many members of the big data R&D community that have participated in BDSSG events and workshops over the past several years. This RFI is a critical step in developing a cross-agency strategic plan that has broad community input and that can be

referenced by all Federal agencies as they move forward over the next five to ten years with their own big data R&D programs, policies, partnerships, and activities.

SUPPLEMENTARY INFORMATION:

Overview: This RFI is issued under the National Big Data R&D Initiative. The NITRD BDSSG is inviting broad community input as it develops a National Big Data R&D Strategic Plan that can be referenced by participating agencies as they conceive and deploy their own big data programs, policies, and activities.

Background: The BDSSG was initially formed to identify big data R&D activities across the Federal Government, offer opportunities for agency coordination, and jointly develop strategies for a national initiative. The National Big Data R&D Initiative was launched in March 2012.

Since the launch, the BDSSG has held numerous meetings and workshops, including a major showcase event of dozens of partnerships that will help advance the frontiers of big data R&D across the country. Many participating federal agencies have already established new big data programs, policies and activities and plan to do more in the future. Currently, the BDSSG is drafting a framework and establishing a set of priory goals for a National Big Data R&D Strategic Plan.

Objective: The major goal of this RFI is to gather information from multiple sectors to inform the development of an effective National Big Data R&D Strategic Plan. After the submission period ends and the feedback is analyzed, a workshop will be held to further discuss and develop the input received.

What We Are Looking For: As a big data stakeholder, we would like to (1) understand your particular role and point of view in the big data innovation ecosystem, and (2) using the draft, *The National Big Data R&D Initiative: Vision and Areas of Interest*, as the basis, encourage you to provide comments and suggestions for how we might best develop an overarching, comprehensive framework to support national-scale big data science and engineering research and education, discoveries and innovation. Please include a description of the areas of critical investment (either within or across agencies), both currently and within a five to ten year horizon. Collectively, your comments could focus on one or more agencies, the set of NITRD agencies as a whole, or the national effort. Please keep in mind that the focus is on high level strategies for how agencies can leverage their collective investments. It will not focus on individual agency plans and will not contain an implementation plan. We are interested in all points of view on the activities that can best support research, development, and innovation in Big Data. However, we are not interested in specific research proposals or vendor offerings. While the NITRD agencies would welcome input on policies that are directly relevant to big data R&D, those policies that are more appropriately determined by the Administration or Congress (or both) are not relevant to this exercise.

Who Can Participate: This RFI is open to all. We especially encourage public and private sector organizations (e.g., universities, government laboratories, companies, non-profits) with big data interests to submit their ideas. Participants must also be willing to have their ideas posted for discussion on a public Web site and included with possible attribution in the plan.

Submission Format: All responses must be no more than two (2) pages long (12 pt. font, 1″ margins) and include:

- Who you are—name, credentials, organization
- Your contact information
- Your experience working with big data and your role in the big data innovation ecosystem
- Comments and suggestions based on reading the initial framework, *The National Big Data R&D Initiative: Vision and Priority Actions* , and guided by the following questions:
  - What are the gaps that are not addressed in the Visions and Priority Actions document?
  - From an interagency perspective, what do you think are the most high impact ideas at the frontiers of big data research and development?
  - What new research, education, and/or infrastructure investments do you think will be game-changing for the big data innovation ecosystem?
  - How can the federal government most effectively enable new partnerships, particularly those that cross sectors or domains?
- A short explanation of why you feel your contribution/ideas should be included in the strategic plan
- Examples, where appropriate

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Government to form a binding contract. Responders are solely responsible for all expenses associated with responding to this RFI, including any subsequent requests for proposals.

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD) on September 26, 2014.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2014–23444 Filed 10–1–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0212]

Oversight of Counterfeit, Fraudulent, and Suspect Items in the Nuclear Industry

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory issue summary; public meeting and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking public comment on draft regulatory issue summary (RIS) 2014–XX. This draft RIS, if finalized, is intended to heighten awareness of existing NRC's regulations and reiterate how they apply to the nuclear industry stakeholders' oversight of counterfeit, fraudulent, and suspect items (CFSI) to all NRC's licensees and certificate holders, Agreement State radiation control program directors, state liason officers, contractors and vendors.

DATES: Submit comments by November 3, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0212. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: 3WFN, 06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the

SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Tanya Mensah, Office of Nuclear Reactor Regulation, telephone: 301–415–3610, email: *Tanya.Mensah@nrc.gov;* or James Gaslevic, Office of New Reactors, telephone: 301–415–2776, email: *James.Gaslevic@nrc.gov,* both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0212 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–2014–0212.
- 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 the **SUPPLEMENTARY INFORMATION** section.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0212 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 that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The NRC issues RISs to communicate with stakeholders on a broad range of regulatory matters. This may include communicating staff technical positions on matters that have not been communicated to or are not broadly understood by the nuclear industry.

The NRC staff has developed draft RIS 2014–XX, ''Oversight of Counterfeit, Fraudulent, and Suspect Items in the Nuclear Industry,'' to heighten awareness of the existing NRC regulations and how they apply to the nuclear stakeholders' oversight of CFSI. The NRC assessment is that the regulatory provisions identified and discussed in the draft RIS: (i) Provide sufficient authority for the NRC to take regulatory action addressing CFSI issues within the scope of the NRC's regulatory authority and jurisdiction; and (ii) are sufficiently clear and comprehensive to alert regulated entities with respect to their responsibilities and obligations with respect to CFSI as established under those NRC regulatory provisions. The NRC requests comments on the NRC's assessment. If commenters disagree with the NRC's assessment, then the NRC requests that commenters identify the specific matter or area in which the NRC's regulatory infrastructure is deficient or incomplete, and how the NRC could address or rectify the deficiency or incompleteness. Comments identifying needed changes would be most helpful if they describe the entities involved, the specific matter, situation or deficiency in the NRC's infrastructure, and a description of the proposed activity or regulatory prohibition needed to successfully address the matter, situation or deficiency.

The RIS, if issued in final form, may be used by all NRC's licensees and certificate holders, Agreement State radiation control program directors, state liason officers, contractors and vendors. The draft RIS explains that these entities may review this information and consider actions, as appropriate, to prevent CFSI from entering their supply chains, prevent possible installation or use of CFSI at their facilities, and raise awareness of the potential for CFSI to be used in the manufacture of items, including sealed sources and devices. The draft RIS is available electronically in ADAMS under Accession No. ML14192B407.

Public Meeting

The NRC plans to hold a public meeting to discuss the draft RIS and the issues associated with CFSI. The NRC will consider oral comments made in developing the final RIS, but the NRC will not prepare formal written comment responses to oral comments made at the public meeting. You may submit written comments either electronically or in writing, as described in the **ADDRESSES** section of this document. Additional details regarding the meeting will be posted at least 10 days prior to the public meeting on the NRC's Public Meeting Schedule Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

Dated at Rockville, Maryland, this 25th day of September 2014.

For the Nuclear Regulatory Commission.

Sheldon D. Stuchell,

Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–23509 Filed 10–1–14; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F St NE., Washington, DC 20549–2736.

Extension: Rule 15c1–6.
SEC File No. 270–423, OMB Control No.3235–0472

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15c1–6 (17 CFR 240.15c1–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15c1–6 states that any broker-dealer trying to sell to or buy from a customer a security in a primary or secondary distribution in which the broker-dealer is participating or is otherwise financially interested must give the customer written notification of the broker-dealer's participation or interest at or before completion of the transaction. The Commission estimates that 446 respondents collect information annually under Rule 15c1–6 and that each respondent would spend approximately 10 hours annually complying with the collection of information requirement (approximately 4,460 hours in aggregate).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: September 26, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23451 Filed 10–1–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Rule 15c2–1, SEC File No. 270–418, OMB Control No. 3235–0485.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15c2–1, (17 CFR 240.15c2–1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15c2–1 prohibits the commingling under the same lien of securities of margin customers (a) with other customers without their written consent, and (b) with the broker-dealer. The rule also prohibits the re-hypothecation of customers' margin securities for a sum in excess of the customer's aggregate indebtedness. Pursuant to Rule 15c2–1, respondents must collect information necessary to prevent the re-hypothecation of customer securities in contravention of the rule, issue and retain copies of notices of hypothecation of customer securities in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protections.

There are approximately 61 respondents (*i.e.,* broker-dealers that conducted business with the public, filed Part II or Part IICSE of the FOCUS Report, did not claim an exemption from the Rule 15c3–3 reserve formula computation, and reported that they had a bank loan during at least one quarter of the current year) that require an aggregate total of 1,373 hours to comply with the rule. Each of these approximately 61 registered broker-dealers makes an estimated 45 annual responses. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 1,373 burden hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: September 26, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23453 Filed 10–1–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F St NE., Washington, DC 20549–2736.

Extension: Rule 15c1–7, SEC File No. 270–146, OMB Control No.3235–0134.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15c1–7 (17 CFR 240.15c1–7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15c1–7 states that any act of a broker-dealer designed to effect securities transactions with or for a customer account over which the broker-dealer (directly or through an agent or employee) has discretion will be considered a fraudulent, manipulative, or deceptive practice under the federal securities laws, unless a record is made of the transaction immediately by the broker-dealer. The record must include (a) the name of the customer, (b) the name, amount, and price of the security, and (c) the date and time when such transaction took place.

The Commission estimates that 446 respondents collect information related to approximately 400,000 transactions annually under Rule 15c1–7 and that each respondent would spend approximately 5 minutes on the collection of information for each transaction, for approximately 33,333 aggregate hours per year (approximately 74.7 hours per respondent).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

September 26, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23452 Filed 10–1–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73235; File No. SR–BYX–2014–025]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.9(c) To Adopt a Supplemental Peg Order

September 26, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 15, 2014, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposed to amend: (i) Rule 11.9(c) to adopt a new order type called the Supplemental Peg Order and; (ii) Rule 11.12(a) to reflect the priority of Supplemental Peg Orders. The proposed Supplemental Peg Order is identical to the existing Route Peg Order available on EDGX Exchange, Inc. (''EDGX'') and EDGA Exchange, Inc. (''EDGA'')[5] and similar to order types offered by the Nasdaq Stock Market LLC (''Nasdaq'') and NYSE Arca, Inc. (''NYSE Arca'').[6] The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[7]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend: (i) Rule 11.9(c) to adopt a new order type called the Supplemental Peg Order and; (ii) Rule 11.12(a) to reflect the priority of Supplemental Peg Orders. The proposed Supplemental Peg Order is identical to the existing Route Peg Order available on EDGX and EDGA[8] and similar to order types offered by the NYSE and NYSE Arca.[9]

Earlier this year, the Exchange and its affiliate, BATS Exchange, Inc. (''BZX''), received approval to affect a merger (the ''Merger'') of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA (together with BZX, BYX and EDGX, the ''BGM Affiliated Exchanges'').[10] In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to add certain system functionality currently offered by EDGA and EDGX in order to provide a consistent technology offering for users of the BGM Affiliated Exchanges.

Like the Route Peg Order on EDGA and EDGX,[11] the proposed Supplemental Peg Order would be a non-displayed limit order that posts to the BATS Book,[12] and thereafter be eligible for execution at the National Best Bid (''NBB'') for buy orders and National Best Offer (''NBO'') for sell orders against routable orders that are equal to or less than the aggregate size of the Supplemental Peg Order interest available at that price. Supplemental Peg Orders are passive, resting orders on the BATS Book and do not take liquidity. A User[13] may specify a minimum execution quantity for a Supplemental Peg Order. A minimum execution quantity on a Supplemental Peg Order will no longer apply where the number of shares remaining after a partial execution are less than the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* EDGA Rules 11.5(c)(14), 11.8(a)(2) and 11.8(a)(7); EDGX Rules 11.5(c)(17), 11.8(a)(2) and 11.8(a)(7).

[6] *See* Nasdaq Rules 4751(f)(14) and 4757(a)(1)(D); NYSE Arca Rule 7.31(f).

[7] 17 CFR 240.19b–4(f)(6)(iii).

[8] *See supra* note 5.

[9] *See supra* note 6.

[10] *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039).

[11] *See* EDGA Rule 11.5(c)(14); EDGX Rule 11.5 (c)(17).

[12] The ''BATS Book'' is defined as ''the System's electronic file of orders.'' *See* Exchange Rule 1.5(e).

[13] The term ''User'' is defined under Exchange Rule 11.5(cc) as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.''

minimum execution quantity. Supplemental Peg Orders are eligible for execution in a given security during the Pre-Opening Session, Regular Trading Hours, and After Hours Trading Session.[14] Supplemental Peg Orders are not eligible for execution in the Opening Process.[15] A Supplemental Peg Order does not execute at a price that is inferior to a Protected Quotation, and is not permitted to execute if the National Best Bid or Offer (''NBBO'') is locked or crossed. Any and all remaining, unexecuted Supplemental Peg Orders are cancelled at the conclusion of the After Hours Trading Session. The Exchange notes that the proposed rule text is substantially identical to the rules of EDGA and EDGX.[16]

The Exchange also proposes to amend Rule 11.12(a)(2) to outline the execution priority of the proposed Supplemental Peg Order. Like a Route Peg Order on EDGA and EDGX,[17] an incoming order that is eligible for routing would first be matched against orders other than Supplemental Peg Orders in price/time priority in accordance with Rule 11.12(a)(2).[18] Any unexecuted portion of that order would then be eligible to execute against any Supplemental Peg Orders resting on the BATS Book. The Exchange also proposes to amend Rule 11.12(a)(4) and add new subparagraph (a)(6) to Rule 11.12 to state that if a Supplemental Peg Order is partially executed, the remaining portion of the order would continue to be eligible for execution but it would be assigned a new timestamp after each partial execution. Assigning a new timestamp after each partial execution would allow for a rotating priority of executions for Users who place Supplemental Peg Orders. The Exchange notes that the proposed rule text is substantially similar to the rules of EDGA and EDGX.[19]

Implementation Date

The Exchange will announce the effective date of the proposed rule change in a Trade Desk Notice to be published following publication of the proposed rule change by the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act[20] and further the objectives of Section 6(b)(5) of the Act[21] because they are 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, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest.

The proposed rule change adds certain system functionality currently offered by EDGA and EDGX in order to provide a consistent technology offering across the BGM Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Users of the Exchange that are also participants on BZX, EDGA and/or EDGX. The proposed rule changes would also provide Users with access to functionality that may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users. As explained elsewhere in this proposal, the proposed Supplemental Peg Order is available on numerous other market centers and is substantially identical to the Route Peg Order available on EDGA and EDGX. Thus, the Exchange believes that the proposed functionality has already been accepted as consistent with the Act and offered by various market centers for many years.

The benefits to investors of enhanced depth of liquidity at the NBBO in today's market structure cannot be understated. The Supplemental Peg Order is designed to incentivize Users to place greater liquidity at the NBBO, thereby promoting more favorable and efficient executions for the benefit of public customers. It would do so by (1) offering liquidity providers a means to use the Exchange to post larger limit orders that are only executable at the NBBO and that do not disclose their trading interest to other market participants in advance of execution; (2) offering market participants seeking to access liquidity a greater expectation of market depth at the NBBO than may currently be the case; and (3) offering more predictable executions at the NBBO for Users by reducing the risk that incremental latency associated with routing an order to an away destination may result in an inferior execution. Thus, by providing an additional means by which market participants can be encouraged to post liquidity at the NBBO on the Exchange, which would add depth and support to the NBBO on the Exchange and mitigate the negative effects of market fragmentation, the proposed rule changes would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and national market system. Moreover, the proposed rule changes would protect investors and the public interest by increasing the probability of an execution on the Exchange at the NBBO in the event that the order would otherwise be shipped to an external destination and potentially miss an execution at the NBBO while in transit.

The Exchange believes, however, that the benefits to be derived from Supplemental Peg Orders would only be realized if Supplemental Peg Orders only interact with orders eligible for routing. Routable orders are typically characteristic of public customers, both retail and institutional (colloquially referred to as well as ''natural'' investors), who are concerned with executing at the best price. On the other hand, non-routable orders typically expect to post liquidity on the BATS Book or seek to execute immediately, such as via an Immediate-or-Cancel Order, against the Exchange's best displayed bid or offer or against hidden liquidity at or inside the NBBO. Professional traders, in particular, are more apt to submit, and often immediately cancel, ''pinging'' orders, as reflected in generally higher message-to-trade ratios. The Exchange believes this type of order behavior, while it has its own business purposes, would not be suitable to interact with Supplemental Peg Orders simply because Users would be reticent to post liquidity via Supplemental Peg Orders given the uncertain, and therefore difficult to manage, exposure to executions against orders attributable to professional traders. Indeed, the Exchange believes

[14] Route Peg Orders on EDGA and EDGX are currently only eligible for execution during Regular Trading Hours. *See supra* note 11. The Exchange understands that EDGA and EDGX are to file a propose rule change with the Commission to permit Route Peg Orders to be eligible for execution during the Pre-Opening and Post-Closing Sessions.

[15] The Exchange's process currently applies only to BATS-listed securities. The Exchange has filed a proposed rule change with the Commission to implement an Opening Process for non-BATS-listed securities. *See* SR–BYX–2014–018. Because there is currently no Opening Process for non-BATS-listed securities, if Supplemental Peg Orders are offered prior to the approval of the proposed rule change or if the proposed rule change is never approved, then this restriction will only apply to BATS-listed securities.

[16] *See supra* note 11.

[17] *See* EDGA Rule 11.8(a)(2); EDGX Rule 11.8(a)(2).

[18] In sum, Exchange Rule 11.12(a)(2) states that the System shall execute equally priced trading interest within the System in time priority in the following order: Displayed size of Limit Orders; non-displayed Limit Orders; Pegged Orders; Mid-Point Peg Orders; Reserve size of orders; and discretionary portion of Discretionary Orders as set forth in Exchange Rule 11.9(c)(9).

[19] *See* EDGA Rule 11.8(a)(5) and (7); EDGX Rule 11.8(a)(5) and (7).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

potential liquidity providers would be more apt to provide liquidity in alternative trading systems and other non-exchange market centers where the customization and segmentation experience may be less transparent and objective.

While non-routable orders would not be permitted to execute against Supplemental Peg Orders, the Exchange does not believe that the proposed rule changes would be designed to permit unfair discrimination between customers, brokers, or dealers. First, the Exchange believes this limited exception is constructed narrowly enough, based on rational and legitimate grounds, so that the compelling policy objectives, which are wholly consistent with the Act, can be realized. Second, the Exchange is not proposing to limit the type of User that can place routable orders, or that can place Supplemental Peg Orders. So any disadvantage resulting from the limitation to executing against routable orders would not target particular segments of market participants, *per se,* but rather a particular type of market behavior. Therefore, the Exchange believes that not only would the proposed rule changes not be designed to permit unfair discrimination between customers, brokers, or dealers, the differentiation between routable and non-routable orders is an important element for the Supplemental Peg Order to be able to achieve the objectives of protecting investors and the public interest and promoting just and equitable principles of trade.

The Exchange also believes that permitting executions against routable orders that are equal to or less than the aggregate size of the Supplemental Peg Order interest available at that price would remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest because it would incentivize Users seeking large size executions to route orders to the Exchange by increasing opportunities for executions against Supplemental Peg Orders in a manner similar to existing functionality available on EDGA and EDGX [22] as well as Nasdaq and NYSE Arca.[23]

The Exchange also believes its proposal to provide optional functionality that would allow Users to designate a minimum execution quantity on a Supplemental Peg Order removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it would provide an incentive for Members seeking larger-sized executions both to post liquidity at the Exchange using this feature and to route larger-sized orders to the Exchange because of the potential for an execution against such liquidity. The Exchange further believes that adding an optional minimum quantity would remove impediments to and perfect the mechanism of a free and open market system because the proposed functionality is similar to functionality available at the NYSE Arca.[24] The Exchange believes it is appropriate to provide an option for Users seeking to provide such liquidity to not only designate a minimum execution quantity, but for a minimum execution quantity on a Supplemental Peg order to no longer apply where the number of shares remaining after a partial execution are less than the minimum execution quantity. Doing so would permit Users to continue to have their Supplemental Peg Orders eligible for execution in such circumstances. In such case, Users will have the option to cancel their Supplemental Peg Order if they wish.

Lastly, the Exchange believes that the proposal will promote competition by offering an order type that is similar to order types offered by EDGA, EDGX, Nasdaq and NYSE Arca.[25] Therefore, the Exchange believes the proposed rule change is designed to support the principles of Section 11A(a)(1) [26] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal will promote competition by enhancing the value of the Exchange's Route Peg Order by mirroring the functionality of similar order types offered by EDGA, EDGX, Nasdaq and NYSE Arca.[27] Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. The Exchange reiterates that the proposed rule change is being proposed in the context of the technology integration of the BGM Affiliated Exchanges. Therefore, the Exchange believes the proposed rule change will benefit Exchange participants in that it is one of several changes necessary to achieve a consistent technology offering by the BGM Affiliated Exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [28] of the Act and Rule 19b–4(f)(6) [29] thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.[30]

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.

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:

[22] *See supra* note 5.

[23] *See supra* note 6.

[24] *Id.*

[25] *See supra* notes 5 and 6.

[26] 15 U.S.C. 78k–1(a)(1).

[27] *See supra* notes 5 and 6.

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6).

[30] 17 CFR 240.19b–4(f)(6)(iii).

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–BYX–2014–025 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–BYX–2014–025. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2014–025, and should be submitted on or before October 23, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23450 Filed 10–1–14; 8:45 am]

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[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73234; File No. SR–BATS–2014–042]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.9(c) To Adopt a Supplemental Peg Order

September 26, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 15, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposed to amend: (i) Rule 11.9(c) to adopt a new order type called the Supplemental Peg Order and; (ii) Rule 11.12(a) to reflect the priority of Supplemental Peg Orders. The proposed Supplemental Peg Order is identical to the existing Route Peg Order available on EDGX Exchange, Inc. (''EDGX'') and EDGA Exchange, Inc. (''EDGA'')[5] and similar to order types offered by the Nasdaq Stock Market LLC (''Nasdaq'') and NYSE Arca, Inc. (''NYSE Arca'').[6] The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[7]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend: (i) Rule 11.9(c) to adopt a new order type called the Supplemental Peg Order and; (ii) Rule 11.12(a) to reflect the priority of Supplemental Peg Orders. The proposed Supplemental Peg Order is identical to the existing Route Peg Order available on EDGX and EDGA[8] and similar to order types offered by the NYSE and NYSE Arca.[9]

Earlier this year, the Exchange and its affiliate, BATS Y-Exchange, Inc. (''BYX''), received approval to affect a merger (the ''Merger'') of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA (together with BATS, BYX and EDGX, the ''BGM Affiliated Exchanges'').[10] In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to add certain system functionality currently offered by EDGA and EDGX in order to provide a consistent technology offering for users of the BGM Affiliated Exchanges.

Like the Route Peg Order on EDGA and EDGX,[11] the proposed Supplemental Peg Order would be a non-displayed limit order that posts to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* EDGA Rules 11.5(c)(14), 11.8(a)(2) and 11.8(a)(7); EDGX Rules 11.5(c)(17), 11.8(a)(2) and 11.8(a)(7).

[6] *See* Nasdaq Rules 4751(f)(14) and 4757(a)(1)(D); NYSE Arca Rule 7.31(f).

[7] 17 CFR 240.19b–4(f)(6)(iii).

[8] *See supra* note 5.

[9] *See supra* note 6.

[10] *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039).

[11] *See* EDGA Rule 11.5(c)(14); EDGX Rule 11.5 (c)(17).

the BATS Book,[12] and thereafter be eligible for execution at the National Best Bid (''NBB'') for buy orders and National Best Offer (''NBO'') for sell orders against routable orders that are equal to or less than the aggregate size of the Supplemental Peg Order interest available at that price. Supplemental Peg Orders are passive, resting orders on the BATS Book and do not take liquidity. A User[13] may specify a minimum execution quantity for a Supplemental Peg Order. A minimum execution quantity on a Supplemental Peg Order will no longer apply where the number of shares remaining after a partial execution are less than the minimum execution quantity. Supplemental Peg Orders are eligible for execution in a given security during the Pre-Opening Session, Regular Trading Hours, and After Hours Trading Session.[14] Supplemental Peg Orders are not eligible for execution in the Opening Process.[15] A Supplemental Peg Order does not execute at a price that is inferior to a Protected Quotation, and is not permitted to execute if the National Best Bid or Offer (''NBBO'') is locked or crossed. Any and all remaining, unexecuted Supplemental Peg Orders are cancelled at the conclusion of the After Hours Trading Session. The Exchange notes that the proposed rule text is substantially identical to the rules of EDGA and EDGX.[16]

The Exchange also proposes to amend Rule 11.12(a)(2) to outline the execution priority of the proposed Supplemental Peg Order. Like a Route Peg Order on EDGA and EDGX,[17] an incoming order that is eligible for routing would first be matched against orders other than Supplemental Peg Orders in price/time priority in accordance with Rule 11.12(a)(2).[18] Any unexecuted portion of that order would then be eligible to execute against any Supplemental Peg Orders resting on the BATS Book. The Exchange also proposes to amend Rule 11.12(a)(4) and add new subparagraph (a)(6) to Rule 11.12 to state that if a Supplemental Peg Order is partially executed, the remaining portion of the order would continue to be eligible for execution but it would be assigned a new timestamp after each partial execution. Assigning a new timestamp after each partial execution would allow for a rotating priority of executions for Users who place Supplemental Peg Orders. The Exchange notes that the proposed rule text is substantially similar to the rules of EDGA and EDGX.[19]

Implementation Date

The Exchange will announce the effective date of the proposed rule change in a Trade Desk Notice to be published following publication of the proposed rule change by the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act[20] and further the objectives of Section 6(b)(5) of the Act[21] because they are 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, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest.

The proposed rule change adds certain system functionality currently offered by EDGA and EDGX in order to provide a consistent technology offering across the BGM Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Users of the Exchange that are also participants on BYX, EDGA and/or EDGX. The proposed rule changes would also provide Users with access to functionality that may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users. As explained elsewhere in this proposal, the proposed Supplemental Peg Order is available on numerous other market centers and is substantially identical to the Route Peg Order available on EDGA and EDGX. Thus, the Exchange believes that the proposed functionality has already been accepted as consistent with the Act and offered by various market centers for many years.

The benefits to investors of enhanced depth of liquidity at the NBBO in today's market structure cannot be understated. The Supplemental Peg Order is designed to incentivize Users to place greater liquidity at the NBBO, thereby promoting more favorable and efficient executions for the benefit of public customers. It would do so by (1) offering liquidity providers a means to use the Exchange to post larger limit orders that are only executable at the NBBO and that do not disclose their trading interest to other market participants in advance of execution; (2) offering market participants seeking to access liquidity a greater expectation of market depth at the NBBO than may currently be the case; and (3) offering more predictable executions at the NBBO for Users by reducing the risk that incremental latency associated with routing an order to an away destination may result in an inferior execution. Thus, by providing an additional means by which market participants can be encouraged to post liquidity at the NBBO on the Exchange, which would add depth and support to the NBBO on the Exchange and mitigate the negative effects of market fragmentation, the proposed rule changes would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and national market system. Moreover, the proposed rule changes would protect investors and the public interest by increasing the probability of an execution on the Exchange at the NBBO in the event that the order would otherwise be shipped to an external destination and potentially miss an execution at the NBBO while in transit.

The Exchange believes, however, that the benefits to be derived from Supplemental Peg Orders would only be realized if Supplemental Peg Orders only interact with orders eligible for routing. Routable orders are typically characteristic of public customers, both retail and institutional (colloquially referred to as well as ''natural'' investors), who are concerned with executing at the best price. On the other hand, non-routable orders typically

[12] The ''BATS Book'' is defined as ''the System's electronic file of orders.'' *See* Exchange Rule 1.5(e).

[13] The term ''User'' is defined under Exchange Rule 11.5(cc) as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.''

[14] Route Peg Orders on EDGA and EDGX are currently only eligible for execution during Regular Trading Hours. *See supra* note 11. The Exchange understands that EDGA and EDGX are to file a propose rule change with the Commission to permit Route Peg Orders to be eligible for execution during the Pre-Opening and Post-Closing Sessions.

[15] The Exchange's process currently applies only to BATS-listed securities. The Exchange has filed a proposed rule change with the Commission to implement an Opening Process for non-BATS-listed securities. *See* SR–BYX–2014–018. Because there is currently no Opening Process for non-BATS-listed securities, if Supplemental Peg Orders are offered prior to the approval of the proposed rule change or if the proposed rule change is never approved, then this restriction will only apply to BATS-listed securities.

[16] *See supra* note 11.

[17] *See* EDGA Rule 11.8(a)(2); EDGX Rule 11.8(a)(2).

[18] In sum, Exchange Rule 11.12(a)(2) states that the System shall execute equally priced trading interest within the System in time priority in the following order: displayed size of Limit Orders; non-displayed Limit Orders; Pegged Orders; Mid-Point Peg Orders; Reserve size of orders; and discretionary portion of Discretionary Orders as set forth in Exchange Rule 11.9(c)(9).

[19] *See* EDGA Rule 11.8(a)(5) and (7); EDGX Rule 11.8(a)(5) and (7).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

expect to post liquidity on the BATS Book or seek to execute immediately, such as via an Immediate-or-Cancel Order, against the Exchange's best displayed bid or offer or against hidden liquidity at or inside the NBBO. Professional traders, in particular, are more apt to submit, and often immediately cancel, ''pinging'' orders, as reflected in generally higher message-to-trade ratios. The Exchange believes this type of order behavior, while it has its own business purposes, would not be suitable to interact with Supplemental Peg Orders simply because Users would be reticent to post liquidity via Supplemental Peg Orders given the uncertain, and therefore difficult to manage, exposure to executions against orders attributable to professional traders. Indeed, the Exchange believes potential liquidity providers would be more apt to provide liquidity in alternative trading systems and other non-exchange market centers where the customization and segmentation experience may be less transparent and objective.

While non-routable orders would not be permitted to execute against Supplemental Peg Orders, the Exchange does not believe that the proposed rule changes would be designed to permit unfair discrimination between customers, brokers, or dealers. First, the Exchange believes this limited exception is constructed narrowly enough, based on rational and legitimate grounds, so that the compelling policy objectives, which are wholly consistent with the Act, can be realized. Second, the Exchange is not proposing to limit the type of User that can place routable orders, or that can place Supplemental Peg Orders. So any disadvantage resulting from the limitation to executing against routable orders would not target particular segments of market participants, *per se,* but rather a particular type of market behavior. Therefore, the Exchange believes that not only would the proposed rule changes not be designed to permit unfair discrimination between customers, brokers, or dealers, the differentiation between routable and non-routable orders is an important element for the Supplemental Peg Order to be able to achieve the objectives of protecting investors and the public interest and promoting just and equitable principles of trade.

The Exchange also believes that permitting executions against routable orders that are equal to or less than the aggregate size of the Supplemental Peg Order interest available at that price would remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest because it would incentivize Users seeking large size executions to route orders to the Exchange by increasing opportunities for executions against Supplemental Peg Orders in a manner similar to existing functionality available on EDGA and EDGX [22] as well as Nasdaq and NYSE Arca.[23]

The Exchange also believes its proposal to provide optional functionality that would allow Users to designate a minimum execution quantity on a Supplemental Peg Order removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it would provide an incentive for Members seeking larger-sized executions both to post liquidity at the Exchange using this feature and to route larger-sized orders to the Exchange because of the potential for an execution against such liquidity. The Exchange further believes that adding an optional minimum quantity would remove impediments to and perfect the mechanism of a free and open market system because the proposed functionality is similar to functionality available at the NYSE Arca.[24] The Exchange believes it is appropriate to provide an option for Users seeking to provide such liquidity to not only designate a minimum execution quantity, but for a minimum execution quantity on a Supplemental Peg order to no longer apply where the number of shares remaining after a partial execution are less than the minimum execution quantity. Doing so would permit Users to continue to have their Supplemental Peg Orders eligible for execution in such circumstances. In such case, Users will have the option to cancel their Supplemental Peg Order if they wish.

Lastly, the Exchange believes that the proposal will promote competition by offering an order type that is similar to order types offered by EDGA, EDGX, Nasdaq and NYSE Arca.[25] Therefore, the Exchange believes the proposed rule change is designed to support the principles of Section 11A(a)(1) [26] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

[22] *See supra* note 5.

[23] *See supra* note 6.

[24] *Id.*

[25] *See supra* notes 5 and 6.

[26] 15 U.S.C. 78k–1(a)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal will promote competition by enhancing the value of the Exchange's Route Peg Order by mirroring the functionality of similar order types offered by EDGA, EDGX, Nasdaq and NYSE Arca.[27] Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. The Exchange reiterates that the proposed rule change is being proposed in the context of the technology integration of the BGM Affiliated Exchanges. Therefore, the Exchange believes the proposed rule change will benefit Exchange participants in that it is one of several changes necessary to achieve a consistent technology offering by the BGM Affiliated Exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [28] of the Act and Rule 19b–4(f)(6) [29] thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a

[27] *See supra* notes 5 and 6.

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6).

brief description and text of the proposed rule change, at least five business days prior to the date of filing.[30]

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.

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–BATS–2014–042 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–BATS–2014–042. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2014–042, and should be submitted on or before October 23, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23449 Filed 10–1–14; 8:45 am]

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[30] 17 CFR 240.19b–4(f)(6)(iii).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 73233; File No. SR–NASDAQ–2014–053]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of Shares of the iShares Commodities Strategy ETF iShares of U.S. ETF Trust

September 26, 2014.

I. Introduction

On July 31, 2014, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the shares (''Shares'') of the iShares Commodities Strategy ETF (''Fund'') under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on August 18, 2014.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of Proposed Rule Change

The Exchange proposes to list and trade the Shares pursuant to Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the iShares U.S. ETF Trust (''Trust''), which was established as a Delaware statutory trust on June 21, 2011.[4] The Fund is a series of the Trust. BlackRock Fund Advisors will be the investment adviser (''Adviser'') to the Fund.[5] BlackRock Investments, LCC (''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. State Street Bank and Trust Company will act as the administrator, accounting agent, custodian, and transfer agent to the Fund.

The Exchange has made the following representations and statements in describing the Fund and its principal investments (including those of the Subsidiary, as defined herein), other investments, and investment restrictions.[6]

Principal Investments of the Fund

According to the Exchange, the investment objective of the Fund will be to seek total return by providing investors with broad commodity exposure. The Fund will be an actively managed exchange-traded fund (''ETF'') that seeks to achieve its investment objective by investing in a combination of exchange-traded commodity futures contracts, exchange-traded options on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72813 (Aug. 12, 2014), 79 FR 48787 (''Notice'').

[4] According to the Exchange, the Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission. *See* Registration Statement on Form N–1A for the Trust, dated January 24, 2014 (File Nos. 333–179904 and 811–22649). The Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (''1940 Act''). *See* Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812–13601).

[5] The Exchange states that, while the Adviser is not a broker-dealer, the Adviser is affiliated with the Distributor, which is a broker-dealer. The Exchange represents that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and changes to the Fund's portfolio. Nasdaq Rule 5735(g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the open-end fund's portfolio (including the portfolio of the Subsidiary, as defined herein). In addition, the Exchange represents that in the event (a) the Adviser becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Adviser will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and changes to the portfolio, and the Adviser will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. The Exchange also states that the Fund does not currently intend to use a sub-adviser.

[6] The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, calculation of net asset value (''NAV''), fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, can be found in the Notice and Registration Statement, as applicable. *See supra* notes 3 and 4, respectively.

futures contracts, and exchange-cleared swaps (collectively, ''Commodity-Linked Investments'') [7] and exchange-traded commodity-related equities (''Commodity-Related Equities''),[8] thereby obtaining exposure to the commodities markets. The Fund will seek to gain exposure to Commodity-Linked Investments through investments in a wholly-owned subsidiary controlled by the Fund and organized under the laws of the Cayman Islands (''Subsidiary''), and will invest directly in Commodity-Related Equities. The Fund's investment in the Subsidiary may not exceed 25% of the Fund's total assets.

The remainder of the Fund's assets will be invested, either directly by the Fund or through the Subsidiary, in: (1) Short-term, investment grade fixed income securities that include U.S. government and agency securities,[9] treasury inflation-protected securities, sovereign debt obligations of non-U.S. countries, and repurchase agreements; (2) money market instruments; [10] and (3) cash and other cash equivalents. The Fund will use such instruments as investments and to collateralize the Subsidiary's Commodity-Linked Investments exposure on a day-to-day basis.

The Exchange notes that the Fund will not invest directly in physical commodities. The Fund may invest directly in exchange-traded notes (''ETNs''),[11] commodity-linked notes,[12] ETFs [13] and other investment companies, including exchange-traded closed-end funds that provide exposure to commodities, equity securities, and fixed income securities to the extent permitted under the 1940 Act.[14]

According to the Exchange, the Fund's investment in the Subsidiary will be designed to help the Fund achieve exposure to commodity returns in a manner consistent with the federal tax requirements applicable to the Fund and other regulated investment companies.

Investments of the Subsidiary

The Subsidiary will seek to make investments generally in Commodity-Linked Investments. The Adviser will use its discretion to determine the percentage of the Fund's assets allocated to the Commodity-Linked Investments held by the Subsidiary and the Commodity-Related Equities portion of the Fund's portfolio. Generally, the Adviser will take various factors into account on a periodic basis in allocating the assets of the Fund, including, but not limited to, the results of proprietary models developed by the Adviser, the performance of index benchmarks for the Commodity-Linked Investments and Commodity-Related Equities relative to each other, relative price differentials for a range of commodity futures for current delivery as compared to similar commodity futures for future delivery, and other market conditions. The weightings of the Fund's portfolio will be reviewed and updated at least annually.

The Subsidiary will be advised by the Adviser [15] and will have the same investment objective as the Fund. However, unlike the Fund, the Subsidiary may invest without limitation in Commodity-Linked Investments. The Subsidiary's investments will provide the Fund with exposure to domestic and international markets. The Subsidiary will initially consider investing in futures contracts based on the table outlined in the Notice.[16] The Exchange notes that the list of commodities futures and commodities markets considered for investment can and will change over time.

The Fund and the Subsidiary are subject to regulation by the Commodity Futures Trading Commission and National Futures Association (''NFA'') and additional disclosure, reporting, and recordkeeping rules imposed upon commodity pools.[17]

[7] ''Commodity-Linked Investments'' will be comprised of exchange-traded futures contracts on the 22 commodities that comprise the S&P GSCI Index and index futures linked to commodities. However, the Fund is not obligated to invest in such futures contracts and does not seek to track the performance of the S&P GSCI Index. Commodity-Linked Investments will also be comprised of exchange-cleared swaps on commodities and exchange-traded options on futures that provide exposure to the investment returns of the commodities markets, without investing directly in physical commodities. According to the Exchange, with respect to the futures contracts and options on futures contracts held indirectly through the Subsidiary, not more than 10% of the weight of such futures contracts and options on futures contracts, in the aggregate, shall consist of such instruments whose principal trading market is not a member of the Intermarket Surveillance Group (''ISG'') or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Nasdaq states that this 10% limitation will be calculated using the value of the contract divided by the total absolute notional value of the Subsidiary's futures contracts.

[8] ''Commodity-Related Equities'' will be comprised of exchange-traded common stocks of companies that operate in commodities, natural resources and energy businesses, and in associated businesses, as well as companies that provide services or have exposure to such businesses.

[9] Such securities will include securities that are issued or guaranteed by the U.S. Treasury, by various agencies of the U.S. government, or by various instrumentalities, which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the ''full faith and credit'' of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government-sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

[10] For the Fund's purposes, money market instruments will include: Short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; non-convertible corporate debt securities with remaining maturities of not more than 397 days that satisfy ratings requirements of Rule 2a–7 under the 1940 Act; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. As a related matter, according to the Exchange, the Fund may invest in shares of money market mutual funds to the extent permitted by the 1940 Act.

[11] According to the Exchange, ETNs are exchange-traded notes as would be listed under Nasdaq Rule 5710.

[12] Such commodity-linked notes will not be exchange-traded. The Fund's investments in such commodity-linked notes will generally be limited to circumstances in which the Fund reaches position limits, accountability levels, or price limits on one or more exchange-traded futures contracts or index futures in which the Fund invests.

[13] An ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country, and region indexes. ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depositary Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735).

[14] Not more than 10% of the equity securities (including shares of ETFs and closed-end funds) and ETNs in which the Fund may invest will be invested in securities that trade in markets that are not members of the ISG, which includes all U.S. national securities exchanges, or are not parties to a comprehensive surveillance sharing agreement with the Exchange.

[15] The Exchange states that the Subsidiary will not be registered under the 1940 Act and will not be directly subject to its investor protections, except as noted in the Registration Statement. However, the Subsidiary will be wholly-owned and controlled by the Fund and will be advised by the Adviser. Therefore, the Fund's ownership and control of the Subsidiary will prevent the Subsidiary from taking action contrary to the interests of the Fund or its shareholders. The Trust's board will have oversight responsibility for the investment activities of the Fund, including its expected investment in the Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. The Adviser will receive no additional compensation for managing the assets of the Subsidiary. The Subsidiary will also enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.

[16] *See* Notice, *supra* note 3, 79 FR at 48789–48790. In the Notice, the Exchange states that as U.S. and London exchanges list additional contracts, as currently listed contracts on those exchanges gain sufficient liquidity, or as other exchanges list sufficiently liquid contracts, the Adviser will include those contracts in the list of possible investments of the Subsidiary.

[17] As a result of the instruments that will be indirectly held by the Fund, the Exchange represents that the Adviser has registered as a

Continued

Investment Restrictions

The Fund may not invest more than 25% of the value of its total assets in securities of issuers in any one industry or group of industries other than certain industries described in the Registration Statement. This restriction will not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other investment companies.

The Subsidiary's shares will be offered only to the Fund, and the Fund will not sell shares of the Subsidiary to other investors. The Fund will not purchase securities of open-end or closed-end investment companies except in compliance with the 1940 Act.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment).[18] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.[19]

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under SubChapter M of the Internal Revenue Code.

Under the 1940 Act, the Fund's investment in investment companies will be limited to, subject to certain exceptions: (i) 3% of the total outstanding voting stock of any one investment company; (ii) 5% of the Fund's total assets with respect to any one investment company; and (iii) 10% of the Fund's total assets with respect to investment companies in the aggregate.

The Fund's and the Subsidiary's investments will be consistent with the Fund's investment objective, and, although certain investments will have a leveraging effect on the Fund, the Fund will not seek leveraged returns (*e.g.,* 2X or -3X).

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[22] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares. In addition, an Indicative Optimized Portfolio Value, defined in Nasdaq Rule 5735(c)(3) as the ''Intraday Indicative Value,'' [23] will be available on the NASDAQ OMX Information LLC proprietary index data service, and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.[24] On each business day, before commencement of trading in Shares in the Regular Market Session [25] on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in Nasdaq Rule 5735(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[26] The Adviser, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business of the New York Stock Exchange, the list of the names and quantities of the instruments, as well as the estimated amount of cash (if any), constituting the creation basket for the Fund for that day. The NAV of the Fund will be determined as of the close of trading (normally 4:00 p.m., Eastern Time) on each day the New York Stock Exchange is open for business.[27]

commodity pool operator and is also a member of the NFA.

[18] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[19] Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

[20] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[23] According to the Exchange, the Intraday Indicative Value will reflect an estimated intraday value of the Fund's portfolio (including the Subsidiary's portfolio) and will be based upon the current value for the components of a Disclosed Portfolio. The Exchange states that the Intraday Indicative Value will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close, that premiums and discounts between the Intraday Indicative Value and the market price may occur, and that the Intraday Indicative Value should not be viewed as a ''real time'' update of the NAV per Share of the Fund, which is calculated only once a day.

[24] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX global index data feed service. The Exchange represents that GIDS offers real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs, and that GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

[25] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4:00 a.m. to 9:30 a.m., Eastern Time; (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m., Eastern Time; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m., Eastern Time).

[26] On a daily basis, the Fund will disclose the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

[27] NAV per Share will be calculated for the Fund by taking the market price of the Fund's total assets, less all liabilities, dividing such amount by the total number of Shares outstanding, and rounding to the nearest cent. The value of the securities, other assets, and liabilities held by the Fund will be determined pursuant to valuation policies and procedures approved by the Trust's Board. The Fund's assets and liabilities will be valued primarily on the basis of market quotations. Equity securities and debt securities, including ETNs, traded on a recognized securities exchange will be valued at market value, which is determined using the last reported official closing price or last trading price on the exchange or other market on which the

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for any underlying exchange-traded equity will be available via the CTA high-speed line, and will be available from the national securities exchange on which they are listed. Quotation and last-sale information for any underlying exchange-traded options or exchange-traded futures contracts will be available via the quote and trade service of their respective primary exchanges. Information on the S&P GSCI Index will be available on the S&P Dow Jones Indices Web site. The Fund's Web site, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. The Exchange further notes that intraday, executable price quotations on the exchange-traded assets held by the Fund and the Subsidiary, including the Commodity-Related Equities, futures contracts, options on futures contracts, index futures, ETNs, ETFs, and other investment companies, including closed-end funds, will be available on the exchange on which they are traded. Intraday, executable price quotations on swaps, money market instruments, commodity-linked notes, and fixed-income instruments will be available from major broker-dealer firms. Intraday price information will also be available through subscription services, such as Bloomberg and Reuters. Additionally, the Trade Reporting and Compliance Engine (''TRACE'') of the Financial Industry Regulatory Authority (''FINRA'') will be a source of price information for certain fixed income securities held by the Fund.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pause provisions under Nasdaq Rules 4120(a)(11) and (12). Trading in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,[28] and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth additional circumstances under which trading in Shares of the Fund may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority, as defined in Nasdaq Rule 5735(c)(4), that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[29] In addition, the Exchange states that, while the Adviser is not registered as a broker-dealer, the Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to that broker-dealer regarding access to information concerning the composition of, or changes to, the portfolio, and that personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio.[30]

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[31] Prior to the commencement of trading, the Exchange states that it will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made the following representations:

(1) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and that these procedures are adequate to properly monitor Exchange trading of

security is primarily traded at the time of valuation. Fixed income securities, including money market securities and U.S. government securities, for which market quotations are readily available are generally valued using such securities' most recent bid prices provided directly from one or more broker-dealers, market makers, or independent third-party pricing services, each of whom may use matrix pricing and valuation models, as well as recent market transactions. Short-term investments that mature in less than 60 days when purchased will be valued at amortized cost. Exchange-traded futures contracts, options on futures contracts, and index futures will be valued at their settled price as of the close of such exchanges. Exchange-cleared swap agreements and commodity-linked notes are generally valued daily based on quotations from market makers or by a pricing service in accordance with valuation procedures adopted by the Trust's board. Shares of underlying ETFs and other investment companies, including closed-end funds, will be valued at their most recent closing price on the exchange on which they are traded. Shares of underlying money market funds will be valued at their NAV.

[28] These reasons may include: (1) The extent to which trading is not occurring in the securities and other assets constituting the Disclosed Portfolio of the Fund and the Subsidiary; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.

[29] *See* Nasdaq Rule 5735(d)(2)(B)(ii).

[30] *See supra* note 5. The Exchange states that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients, as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[31] The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund and the Subsidiary, which include exchange-traded Commodity-Related Equities, exchange-traded or exchange-cleared Commodity-Linked Investments (with the exception of exchange-cleared swaps), ETNs, ETFs and other exchange-traded investment companies, with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such exchange-traded securities and instruments held by the Fund and the Subsidiary from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and such exchange-traded securities and instruments held by the Fund and the Subsidiary from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how and by whom information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund and the Subsidiary must be in compliance with Rule 10A–3 under the Act.[32]

(6) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.

(7) The Fund will invest directly in Commodity-Related Equities and will seek to gain exposure to Commodity-Linked Investments through investments in the Subsidiary. The Fund's investment in the Subsidiary will not exceed 25% of the Fund's total assets.

(8) The Fund will not invest in directly in physical commodities and may invest directly in ETNs, commodity-linked notes, ETFs, and other investment companies.

(9) The Subsidiary will seek to make investments in Commodity-Linked Investments. The Subsidiary will initially consider investing in futures contracts as outlined in the table in the Notice, though the table is subject to change.

(10) The Fund and the Subsidiary's investments will be consistent with the Fund's investment objectives and although certain investments will have a leveraging effect on the Fund, the Fund will not seek leveraged returns.

(11) With respect to the exchange-traded futures contracts and options on futures contracts held indirectly through the Subsidiary, not more than 10% of the weight[33] of such futures contracts and options on futures contracts in the aggregate shall consist of instruments whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. In addition, not more than 10% of the equity securities (including shares of ETFs and closed-end funds) and ETNs in which the Fund may invest will be invested in securities that trade in markets that are not members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(12) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[34] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[35] that the proposed rule change (SR–NASDAQ–2014–053), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Kevin M. O'Neill,

Deputy Secretary.

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[32] *See* 17 CFR 240.10A–3.

[33] To be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary's futures contracts.

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73230; File No. SR–FINRA–2014–036]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Composition of Hearing Panels and Extended Hearing Panels in Disciplinary Proceedings

September 26, 2014.

I. Introduction

On August 7, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 expand the pool of persons eligible to serve as Panelists on a Hearing Panel or an Extended Hearing Panel. The proposed rule change was published for comment in the **Federal Register** on August 21, 2014.[3] The Commission received no comments on the proposed rule change. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 72854 (August 15, 2014), 79 FR 49549.

Commission is approving the proposed rule change.

II. Description of the Proposal

FINRA proposes to amend Rule 9231 to establish a category of persons eligible to serve as Panelists on a Hearing Panel or an Extended Hearing Panel that includes persons currently serving, or having served previously, on a committee appointed or approved by the FINRA Board. FINRA also proposes to make a conforming amendment to Rule 9232, which establishes criteria for the appointment of eligible Panelists to Hearing Panels and Extended Hearing Panels. The proposed rule change would provide FINRA with a larger pool of individuals with experience and expertise that could serve as Panelists.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of Section 15A of the Act.[4]

Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(8) of the Act,[5] which requires, among other things, that FINRA's rules provide a fair procedure for the disciplining of members and persons associated with members. The Commission believes that the proposed rule change will allow FINRA to address complaints filed with the Office of Hearing Officers in a timely manner, and that the complaints will be heard by Panelists who should possess the requisite knowledge and experience to enable them to render a proper and informed judgment. The Commission believes the proposed rule change will allow the Chief Hearing Officer enough flexibility to appoint Extended Hearing Panels that are composed of qualified Panelists capable of responding to complex issues often associated with Extended Hearings, while simultaneously reducing the burdens and time constraints shouldered by all who serve as Panelists.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that expanding the pool of eligible Panelists to include those persons currently serving, or those having served previously, on a committee appointed or approved by the FINRA Board will allow qualified Panelists to promptly address allegations of misconduct by FINRA members and their associated persons. The Commission believes it is in the public interest, and consistent with the Act, that FINRA's mechanism for conducting disciplinary proceedings be designed to address allegations of misconduct properly and in a timely manner. The Commission believes that expanding the pool of applicants to include persons currently serving, or those having served previously, on a Committee appointed or approved by the FINRA Board should enhance FINRA's ability to conduct disciplinary proceedings in a fair and reasonable manner.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–FINRA–2014–036), be, and hereby is, approved.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23445 Filed 10–1–14; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78*o*–3.

[5] 15 U.S.C. 78*o*–3(b)(8).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73231; File No. SR–ICC–2014–15]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify the Implementation of the Revised 2014 ISDA Credit Derivatives Definitions

September 26, 2014.

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 September 19, 2014, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared primarily by ICC. ICC filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(i)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(i).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed changes is to amend the ICC Clearing Rules (the ''Rules'') in order to make clarifying changes related to the implementation of the revised Credit Derivatives Definitions, as published by the International Swaps and Derivatives Association, Inc. (''ISDA'') on February 21, 2014 (the ''2014 ISDA Definitions'') in light of changes in the timing of the industry-wide ISDA protocol.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On September 5, 2014, the Commission issued an order approving ICC's rule filing consisting of proposed amendments to the ICC Rules to incorporate references to the 2014 ISDA Definitions (ICC–2014–11).[5] At the time of filing, the planned industry implementation date for the 2014 ISDA Definitions was September 22, 2014. As has been publicly announced by ISDA, following member feedback, the implementation date for the conversion of existing transactions to the 2014 ISDA Definitions under the ISDA protocol has been delayed until October 6, 2014. In addition, the industry consensus date for the commencement of trading of new transactions based on

[5] Order Approving Proposed Rule Change, as Modified by Amendment No. 2 Thereto, to Revise Rules to Provide for the 2014 ISDA Definitions, Securities Exchange Act Release No. 34–73007 (September 5, 2014), 79 FR 54331 (September 15, 2014) (SR–ICC–2014–11).

the 2014 ISDA Definitions has similarly been delayed until October 6, 2014, with the exception of certain European corporate, financial and sovereign CDS contracts for which new transactions based on the 2014 ISDA Definitions may be entered into commencing on September 22, 2014 (so-called ''protocol excluded transactions''). In an effort to maintain consistency across the CDS marketplace, ICC proposes to modify its Rules so that the implementation of clearing of contracts using the 2014 ISDA Definitions at ICC is consistent with this revised schedule.

ICC proposes to amend its rules to change the definition of the term ''2003/2014 Changeover Effective Date'' from September 22, 2014 to October 6, 2014 (or such later date as may be designated by ICE Clear Credit by Circular), in order to remain consistent with the approach being taken throughout the CDS market. ICC also proposes to make conforming changes throughout the ICC Rules to include reference to recently finalized Standard Terms Supplements related to the index products cleared by ICC. ICC believes such changes will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. The proposed Rule revisions are described in detail as follows.

In Rule 20–102 (Definitions), the 2003/2014 Changeover Effective Date, or the date that ICC will convert converting indices and single names to 2014 ISDA Definitions, was changed to October 6, 2014 (or such later date as may be designated by ICE Clear Credit by Circular) to reflect the delay in the effective date for changes to existing trades under the industry protocol, as described above. Additionally, the definition of Converting Contracts was revised to correct a grammatical typo, revising ''components'' to the singular, ''component.''

Following initial publication of the 2014 ISDA Definitions, two versions of the Standard Terms Supplements referred to in Subchapters 26A, 26C and 26F were issued. In order to be explicitly clear and avoid any potential confusion, ICC has incorporated reference to both the ''Legacy 2014 Supplement'' and ''New 2014 Supplement,'' together the ''2014 Supplements'' in the definitions of ''CDX.NA Untranched Terms Supplement,'' ''CDX.EM Untranched Terms Supplement'' and ''iTraxx Europe Untranched Terms Supplement.'' Reference to such other supplements as may be specified for each index is also added to reflect ICC's continued intention to be consistent with Standard Terms Supplements issued by the industry. Corresponding clarifying changes are made throughout Subchapters 26A, 26C and 26F to properly reference the 2014 Supplements. Consistent with the approach taken in current provisions in the ICC Rules that apply to pre-2014 Standard Terms Supplements, the revisions clarify that certain provisions of the new referenced standard terms supplements relating to bilateral delivery of credit event notices and certain other notices do not apply in the context of cleared contracts. Specifically updates are made in ICC Rules 26A–316, 26A–317, 26C–316, 26C–317, 26F–316 and 26F–317.

Section 17A(b)(3)(F) of the Act [6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[7] because ICC believes that the proposed rule changes will facilitate the prompt and accurate clearance and settlement of swaps. ICC believes the changes proposed herein will provide clarity and accommodate for changes required by the industry following the approval of ICC–2014–11. As stated in ICC–2014–11, in an effort to achieve consistency across the CDS marketplace, ICC's implementation plan is intended to be fully consistent with the planned ISDA protocol implementation. The conforming and clarifying changes related to the revised 2014 ISDA Definitions ensure that ICC's implementation plan is fully consistent with the planned ISDA protocol implementation. As such, the proposed rule changes will facilitate the prompt and accurate clearance and settlement of swaps within the control of ICC within the meaning of Section 17A(b)(3)(F) [8] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule changes would have any impact, or impose any burden, on competition. The clarifying changes related to the revised 2014 ISDA Definitions apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) [9] of the Act and Rule 19b–4(f)(4)(i) [10] 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.

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–ICC–2014–15 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–ICC–2014–15. 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/*

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] *Id.*

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(4)(i).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2014–15 and should be submitted on or before October 23, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23446 Filed 10–1–14; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73237; File No. SR–BATS–2014–043]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Rule 11.24 To Permit Members To Designate Their Retail Orders To Be Identified as Retail on the Exchange's Proprietary Data Feeds

September 26, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposed rule change to adopt a retail attribution program under new Rule 11.24. Under the program, Members[5] will be able to designate that the orders they submit to the Exchange on behalf of retail customers be identified as Retail on the Exchange's proprietary data feeds.[6] The proposed rule change is substantially similar to the existing rules of the BATS Y-Exchange, Inc. (''BYX'')[7] and EDGX Exchange, Inc. (''EDGX'').[8]

[5] A ''Member'' is defined ''any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.'' BYX Rule 1.5(n).

[6] The Exchanges proprietary data feeds are set forth under Exchange Rule 11.22.

[7] *See* BYX Rule 11.24. Securities Exchange Act Release Nos. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (''RPI Approval Order'') (SR–BYX–2012–019); 69643 (May 28, 2013), 78 FR 33136 (June 3, 2013) (Approval Order) (SR–BYX–2013–008); 71249 (January 7, 2014), 79 FR 2229 (January 13, 2014) (SR–BYX–2014–001) (Notice of Filing and Immediate Effectiveness to Extend the Pilot Period for the Retail Price Improvement Program); and 72730 (July 31, 2014), 79 FR 45857 (SR–BYX–2014–013) (Notice of Filing and Immediate Effectiveness to Amend Rule 11.24(a)(2) to Include Riskless Principal Orders to the Types of Orders that May Qualify as Retail Orders under the Retail Price Improvement Program).

[8] *See* Footnote 4 of the Exchange's Fee Schedule *available at http://www.directedge.com/Trading/EDGXFeeSchedule.aspx;* Securities Exchange Act Release Nos. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR–EDGX–2012–47) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 15.1(a) and (c)); Securities Exchange Act Release No. 69378 (April 15, 2013), 78 FR 23617 (April 19, 2013) (SR–EDGX–2013–13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Footnote 4 of the Exchange's Fee Schedule Regarding Retail Orders); 69852 (June 25, 2013), 78 FR 39420 (July 1, 2013) (SR–EDGX–2013–20) (Notice of Filing and Immediate Effectiveness to Amend Footnote 4 of the Exchange's Fee Schedule Regarding Retail Orders); and 72292 (June 2, 2014), 79 FR 32798 (June 6, 2014) (SR–EDGX–2014–13) (Order Approving Proposed Rule Change to Amend Footnote 4 of the Exchange's Fee Schedule to Permit Members to Designate their Retail Orders to be Identified as Retail on the EDGX Book Feed).

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a retail attribution program under new Rule 11.24. Under the program, Members will be able to designate that the orders they submit to the Exchange on behalf of retail customers be identified as Retail on the Exchange's proprietary data feeds. The proposed rule change is substantially similar to the existing rules of BYX and EDGX.[9]

Earlier this year, the Exchange and its affiliate BATS Y-Exchange, Inc. (''BYX'') received approval to effect a merger (the ''Merger'') of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA Exchange, Inc. (''EDGA,'' and together with BATS, BYX and EDGX, the ''BGM Affiliated Exchanges'').[10] In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to add certain system functionality currently offered by BYX and EDGX in order to provide a consistent technology offering for members of the BGM Affiliated Exchanges.[11]

[9] *See supra* notes 7 and 8.

[10] *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039).

[11] The Exchange anticipates that EDGA will submit a similar proposed rule change in the future

Continued

Both BYX and EDGX [12] have established programs in an attempt to attract retail order flow to the Exchange. Under BYX's Retail Price Improvement (''RPI'') Program, all exchange members are permitted to submit Retail Price Improvement Orders (''RPI Orders'') [13] which are designed to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation (''Protected NBB'') or the national best offer that is a Protected Quotation (''Protected NBO,'' and together with the Protected NBB, the ''Protected NBBO'').[14] Under the EDGX program, eligible EDGX members may qualify for a rebate under the Retail Order Tier included in Footnote 4 of the EDGX fee schedule. Both the BYX and EDGX rules define a Retail Order [15] and provides [sic] attestation requirements [16] that Members must complete to send Retail Orders to the Exchange.[17] Under the EDGX program, eligible members may designate also that their Retail Orders be identified as Retail on the EDGX book feed.[18]

The Exchange proposes to adopt a retail attribution program under new Rule 11.24. Under the program, Members who satisfy the requirements under proposed Rule 11.24 will be able to designate that their orders they submit to the Exchange on behalf of retail customers be identified as Retail on the Exchange's proprietary data feeds. Specifically, proposed Rule 11.24 would: (i) Define a Retail Order and Retail Member Organization (''RMO''); (ii) set forth an RMO's qualification and application requirements; (iii) outline procedures for when an RMO fails to abide by the Retail Order requirements; and (iv) outline the procedures under which a Member may appeal the Exchange's decision to disapprove it or disqualify it as an RMO. The proposed rule change is substantially similar to the existing functionality and requirements on the BYX [19] and EDGX.[20] However, unlike the BYX and EDGX programs, the proposed rule change would not include any rebate provision or mechanics for price improvement, as described above. The proposed rule change would only allow an RMO to designate that their Retail Orders be identified as Retail on the Exchange's proprietary data feeds,[21] as is currently provided for by EDGX.

Definitions

The Exchange proposes to adopt the following definitions under proposed Rule 11.24(a). First, the term ''Retail Member Organization'' would be defined as a Member (or a division thereof) that has been approved by the Exchange to submit Retail Orders. The proposed definition of Retail Member Organization is identical to that contained in BYX Rule 11.24(a)(1).[22]

Second, the term ''Retail Order'' would be defined as an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. The proposed definition of Retail Order is identical to that contained in BYX Rule 11.24(a)(1) and in Footnote 4 of the EDGX fee schedule.[23]

Program Requirements and Procedures

The proposed rule change would also include qualification standards and a review process identical to BYX Rule 11.24(b). The qualification and review standards under proposed Rule 11.24(b) are designed to ensure that Members are properly qualified as an RMO and only attribute as Retail those orders that meet the definition of Retail Orders under proposed Rule 11.24(a)(1) described above. Like on BYX, under proposed Rule 11.24(b), any Member could qualify as an RMO if it conducts a retail business or handles Retail Orders on behalf of another broker-dealer. Any Member that wishes to obtain RMO status would be required to submit: (1) An application form; (2) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted by the Member as Retail Orders would meet the qualifications for such orders under proposed Rule 11.24(a)(1); and (3) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow.[24]

Like on BYX and EDGX, an RMO would be required to have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the Member to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If the RMO represents Retail Orders from another broker-dealer customer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The RMO

to add a definition for ''Retail Order'' and to permit members to designate that their Retail Orders be identified as Retail on their respective proprietary data feeds.

[12] *See supra* notes 7 and 8.

[13] A ''Retail Price Improvement Order'' is defined in BYX Rule 11.24(a)(3) as an order that consists of non-displayed interest on the Exchange that is priced better than the Protected NBB or Protected NBO by at least $0.001 and that is identified as such. *See* Rule 11.24(a)(3).

[14] The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid (''NBB'') and national best offer (''NBO,'' together with the NBB, the ''NBBO'') will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

[15] Both BYX and EDGX define Retail Order (i) an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology. *See supra* notes 7 and 8.

[16] Both BYX and EDGX require Members to submit a signed written attestation, in a form prescribed by the exchange, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the Member as a ''Retail Order'' comply with the above requirements. *See supra* notes 7 and 8.

[17] The attestation requirements and definition of Retail Order under Exchange Rule 11.24 are substantially similar to Footnote 4 of the EDGX fee schedule. *See supra* notes 7 and 8.

[18] *See* Footnote 4 of the EDGX's fee schedule *available at http://www.directedge.com/Trading/EDGXFeeSchedule.aspx.* To align functionality with EDGX, BYX has also recently submitted a proposed rule change to the Commission to add paragraph (i) to Rule 11.24 to permit Members to designate that their Retail Orders submitted under the Exchange's RPI Program be identified as Retail on BYX's proprietary data feeds, rather than by their MPID. *See* SR–BYX–2014–024 (filed September 17, 2014).

[19] *See supra* note 7.

[20] *See supra* note 8.

[21] The Exchange will submit a proposed rule change to the Commission should it decide in the future to expand the program to include a rebate or price improvement mechanism for Retail Orders.

[22] *See supra* note 7.

[23] *See supra* notes 7 and 8.

[24] For example, a prospective RMO could be required to provide sample marketing literature, Web site screenshots, other publicly disclosed materials describing the retail nature of their order flow, and such other documentation and information as the Exchange may require to obtain reasonable assurance that the applicant's order flow would meet the requirements of the Retail Order definition.

must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this rule, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.[25]

If the Exchange disapproves the application, the Exchange would provide a written notice to the Member. The disapproved applicant could appeal the disapproval by the Exchange as provided in proposed Rule 11.24(d), and/or reapply for RMO status 90 days after the disapproval notice is issued by the Exchange. The disapproval process is identical to BYX Rule 11.24(b)(4). An RMO also could voluntarily withdraw from such status at any time by giving written notice to the Exchange.

Failure of RMO To Abide by Retail Order Requirements

Proposed Rule 11.24(c) addresses an RMO's failure to abide by Retail Order requirements, which are identical to existing BYX Rule 11.24(c). If an RMO designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that those orders fail to meet any of the requirements of Retail Orders, the Exchange may disqualify a Member from its status as an RMO. When disqualification determinations are made, the Exchange would provide a written disqualification notice to the Member. A disqualified RMO could appeal the disqualification as provided in proposed Rule 11.24(d) and/or reapply for RMO status 90 days after the disqualification notice is issued by the Exchange.

Appeal of Disapproval or Disqualification

Proposed Rule 11.24(d) provides appeal rights to Members, which are also identical to existing BYX Rule 11.24(d). If a Member disputes the Exchange's decision to disapprove it as an RMO under Rule 11.24(b) or disqualify it under Rule 11.24(c), such Member (''appellant'') may request, within five business days after notice of the decision is issued by the Exchange, that the Retail Attribution Panel (the ''Panel'') review the decision to determine if it was correct.

The Panel would consist of the Exchange's Chief Regulatory Officer (''CRO''), or a designee of the CRO, and two officers of the Exchange designated by the Chief Information Officer (''CIO''). The Panel would review the facts and render a decision within the time frame prescribed by the Exchange. The Panel could overturn or modify an action taken by the Exchange and all determinations by the Panel would constitute final action by the Exchange on the matter at issue.

Attribution

Currently, Members may elect that their display-eligible orders entered into the Exchange utilize Attributable Orders[26] to include their market participant identifier (''MPID'') with their published quotations on the Exchange's proprietary data feeds. Under the EDGX program, eligible members may designate that their Retail Orders be identified as Retail on the EDGX book feed, rather than by their MPID.[27] To align functionality with EDGX, the Exchange now proposes Rule 11.24(i) [sic] to permit Members to designate that their Retail Orders submitted under the Exchange's RPI Program be identified as Retail on the Exchange's proprietary data feeds.[28] Members will still be permitted to designate their Retail Orders by their MPID if they do not choose this optional functionality. The Exchange proposes to allow Members to designate their orders as Retail on an order-by-order basis or by establishing a port setting such that all orders submitted through a specific order entry port are designated as Retail.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[29] in general, and furthers the objectives of Section 6(b)(5) of the Act,[30] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change is consistent with these principles because it would increase competition among execution venues, encourage additional liquidity, and offer the potential for increased execution opportunities to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.[31] The Exchange believes that it is appropriate to create a [sic] such a retail attribution program to bring more retail order flow to a public market.

The proposed rule change is substantially similar to the existing functionality and rules of the BYX[32] and EDGX.[33] The Exchange also notes that the Commission approved a similar programs [sic] by NYSE and NYSE MKT.[34] The proposed retail attribution program would contain identical definitions, standards and qualification procedures as the BYX, NYSE, and NYSE MKT programs. However, unlike these programs, the proposed rule change would not include any rebate provision or mechanics for price improvement, as described above. Like the Commission approved for EDGX,[35] the proposed rule change would only allow an RMO to designate that their Retail Orders be identified as Retail on the Exchange's proprietary data feeds.

The Exchange believes that the proposal will benefit market participants and help to promote transparency by providing additional information regarding quotations displayed on the Exchange and

[25] The Exchange or another self-regulatory organization on behalf of the Exchange will review an RMO's compliance with these requirements through an exam-based review of the RMO's internal controls.

[26] An Attributable Order is defined as, ''[a]n order that is designated for display (price and size) including the User's market participant identifier ('MPID').'' *See* Rule 11.9(c)(14).

[27] *See supra* note 8.

[28] A Member's decision on whether to identify their Retail Order as Retail under the proposed rule change will not impact that Member's eligibility to qualify as a Retail Member Organization under Rule 11.24.

[29] 15 U.S.C. 78f.

[30] 15 U.S.C. 78f(b)(5).

[31] *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). *See also* Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's Web site). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

[32] *See supra* note 7.

[33] *See supra* note 8.

[34] *See* New York Stock Exchange, Inc.'s (''NYSE'') Rule 107C. *See also* NYSE MKT LLC (''NYSE MKT'') Rule 107C; NYSE Arca, Inc. (''NYSE Arca'') Rule 7.44. Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55; SR–NYSEAmex-2011–84) (the ''RLP Approval Order''). In conjunction with the approval of the NYSE Retail Liquidity Program, a nearly identical program was proposed and approved to operate on NYSE MKT LLC (formerly, the American Stock Exchange). For ease of reference, the comparisons made in this section only refer to NYSE Rule 107C, but apply equally to NYSE MKT Rule 107C. The Exchange notes that the NYSE and NYSE MKT programs do not allow members to elect that their retail orders be identified as Retail on the exchange's proprietary data feeds.

[35] *See supra* note 8.

disseminated via the Exchange's proprietary data feeds. Specifically, any Member who satisfies the requirement under Rule 11.24(b) that wishes to disclose via the Exchange's proprietary data feeds that their order is a Retail Order will be permitted to do so, and such functionality is substantially similar to that currently offered by EDGX.[36] The proposal also promotes transparency by disseminating additional order information from Members who may otherwise designate their order as non-attributable, and thereby not include their MPID with their published quote on the Exchange's proprietary data feeds.[37] As a result, the proposal will provide Members additional visibility into the types of orders they may interact with when an order is identified as a Retail Order. The Exchange also believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would encourage Members who wish to execute against Retail Orders to send additional orders to the Exchange. Therefore, the Exchange believes the increased liquidity would potentially stimulating further price competition for Retail Orders, deepening the Exchange's liquidity pool, supporting the quality of price discovery, and promoting market transparency.

The Exchange also believes its proposed qualification standards and review process under Rule 11.24 promote just and equitable principles and are not unfairly discriminatory because they are designed to ensure that Members are properly qualified as an RMO and only attribute as Retail those orders that meet the definition of Retail Orders under proposed Rule 11.24(a)(1) described above. The qualification process proposed herein by the Exchange is not designed to permit unfair discrimination, but rather ensure that order that are designated to be attributed are Retail are, in fact, order submitted by a retail customer that satisfy the proposed definition of Retail Order. Lastly, the Exchange notes that these qualification and review provisions are identical to those includes in the rules of the BYX, NYSE, and NYSE MKT that have been previously approved by the Commission.[38]

The Exchange believes that allowing a Member to designate orders as Retail on either an order-by-order or on a port-by-port basis is consistent with the Act for the same reasons as the proposal as a whole is consistent with the Act. The Exchange believes that either method of designation results in the same message being received and processed by the Exchange's systems, and thus, merely reflects a detail in connection with the implementation of the optional designation.

Lastly, the proposed rule change is also generally intended to add certain system functionality currently offered by EDGX in order to provide a consistent technology offering for the Exchange and EDGX. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Members of the Exchange that are also participants on EDGX. The proposed rule change would also provide Members with access to functionality that may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendment will not burden intramarket competition because the ability to designate Retail Orders to be identified as Retail on the Exchange's proprietary data feeds, rather than by their MPID, would be open to all Members that wish to send Retail Orders to the Exchange. The Exchange believes the proposed rule change would increase intermarket competition by identifying orders as Retail via the Exchange's proprietary data feeds would [sic] enable the Exchange to better compete with other exchanges that offer similar retail order programs.[39] The Exchange believes that the amendment, by increasing the amount of disseminated information regarding Retail Orders, will increase the level of competition around retail executions resulting in better prices for retail investors.

The Exchange reiterates that the proposed rule change is being proposed in the context of the technology integration of the BGM Affiliated Exchanges. Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. In addition, the Exchange believes the proposed rule change will benefit Exchange participants in that it is one of several changes necessary to achieve offering consistent functionality by the BGM Affiliated Exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[40] and Rule 19b–4(f)(6) thereunder.[41] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[42] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[43] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange believes that waiver will provide market participants with additional transparency by disseminating additional order information regarding the types of orders they may interact with when an order is identified as a Retail Order in

[36] *Id.*

[37] The Exchange understands that, to date, EDGX has not experienced members who attribute orders by their MPID electing to instead attribute their Retail Orders as Retail on the EDGX book feed. On the contrary, the Exchange understands that EDGX members who previously did not attribute their order have chosen to do so as Retail under the EDGX program. Therefore, the Exchange does not anticipate its Members who currently utilize Attributable Orders to now elect that their Retail Orders be attributed as Retail.

[38] *See supra* notes 7 and 34.

[39] *See supra* note 34.

[40] 15 U.S.C. 78s(b)(3)(A)(iii).

[41] 17 CFR 240.19b–4(f)(6).

[42] 17 CFR 240.19b–4(f)(6).

[43] 17 CFR 240.19b–4(f)(6)(iii).

a timelier manner. The Exchange further believes that waiver will immediately encourage market participants to send additional orders to the Exchange, thereby potentially stimulating further price competition for Retail Orders, deepening the Exchange's liquidity pool, supporting the quality of price discovery, and promoting market transparency. The Commission believes that waiver of the operative delay is consistent with investor protection and the public interest. As a result, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[44]

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–BATS–2014–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2014–043. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2014–043, and should be submitted on or before October 23, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23480 Filed 10–1–14; 8:45 am]

BILLING CODE 8011–01–P

[44] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73236; File No. SR–BYX–2014–024]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.24 To Permit Members To Designate Their Retail Orders To Be Identified as Retail on the Exchange's Proprietary Data Feeds

September 26, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 17, 2014, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposed to amend Rule 11.24 to permit Users to designate that their Retail Orders[5] submitted under the Exchange's Retail Price Improvement (''RPI Program'') be identified as Retail on the Exchange's proprietary data feeds.[6] The proposed rule change is substantially similar to the existing functionality on EDGX Exchange, Inc. (''EDGX'').[7]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] A Retail Order is defined as (i) an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology. *See* Exchange Rule 11.24(a)(2).

[6] The Exchanges proprietary data feeds are set forth under Exchange Rule 11.22.

[7] *See* Footnote 4 of the EDGX fee schedule available at *https://www.directedge.com/Trading/EDGXFeeSchedule.aspx*. *See also* Securities Exchange Act Release No. 72292 (June 2, 2014), 79 FR 32798 (June 6, 2014) (SR–EDGX–2014–13) (Order Approving Proposed Rule Change to Amend Footnote 4 of the Exchange's Fee Schedule to Permit Members to Designate their Retail Orders to be Identified as Retail on the EDGX Book Feed).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Earlier this year, the Exchange and its affiliate BATS Exchange, Inc. (''BZX'') received approval to effect a merger (the ''Merger'') of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA Exchange, Inc. (''EDGA'', and together with BZX, BYX and EDGX, the ''BGM Affiliated Exchanges'').[8] In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to add certain system functionality currently offered by EDGX in order to provide a consistent technology offering for users of the BGM Affiliated Exchanges.[9]

Similar to EDGX,[10] the Exchange established the RPI Program in an attempt to attract retail order flow to the Exchange.[11] Under the RPI Program, all Exchange Users [12] are permitted to submit Retail Price Improvement Orders (''RPI Orders'') [13] which are designed to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation (''Protected NBB'') or the national best offer that is a Protected Quotation (''Protected NBO'', and together with the Protected NBB, the ''Protected NBBO'').[14] Exchange Rule 11.24 defines a Retail Order [15] and provides an attestation requirement [16] that Users must complete to send Retail Orders to the Exchange.[17]

Currently, Users may elect that their display-eligible orders entered into the Exchange utilize Attributable Orders [18] to include their market participant identifier (''MPID'') with their published quotations on the Exchange's proprietary data feeds. Under the EDGX program, eligible members may designate that their Retail Orders be identified as Retail on the EDGX book feed.[19] To align functionality with EDGX, the Exchange now proposes to add paragraph (i) to Rule 11.24 to permit Users to designate that their Retail Orders submitted under the Exchange's RPI Program be identified as Retail on the Exchange's proprietary data feeds, rather than by their MPID.[20] Users will still be permitted to designate their Retail Orders by their MPID if they do not choose this optional functionality. The Exchange proposes to allow Users to designate their orders as Retail on an order-by-order basis or by establishing a port setting such that all orders submitted through a specific order entry port are designated as Retail.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposal will benefit market participants and help to promote transparency by providing additional information regarding quotations displayed on the Exchange and disseminated via the Exchange's proprietary data feeds. Specifically, any Member who satisfies the requirement under Rule 11.24(b) that wishes to disclose via the Exchange's proprietary data feeds that their order is a Retail Order will be permitted to do so, and such functionality is substantially similar to that currently offered by EDGX.[23] The proposal also promotes transparency by disseminating additional order information from Users who may otherwise designate their order as non-attributable, and thereby not include their MPID with their published quote on the Exchange's proprietary data feeds.[24] As a result, the proposal will provide Users additional visibility into the types of orders they may interact with when an order is

[8] *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039).

[9] The Exchange anticipates that EDGA and BZX will submit proposed rule changes in the future to add a definition for ''Retail Order'' and to permit members to designate that their Retail Orders be identified as Retail on their respective proprietary data feeds.

[10] Under the EDGX program, eligible EDGX members may qualify for a rebate under the Retail Order Tier included in Footnote 4 of the Exchange's fee schedule. Footnote 4 of the EDGX fee schedule defines a Retail Order and provides an attestation requirement that Users must complete to send Retail Orders to the Exchange. *See* Footnote 4 of the Exchange's Fee Schedule available at *http://www.directedge.com/Trading/EDGXFeeSchedule.aspx;* Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR–EDGX–2012–47) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 15.1(a) and (c)); Securities Exchange Act Release No. 69378 (April 15, 2013), 78 FR 23617 (April 19, 2013) (SR–EDGX–2013–13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Footnote 4 of the Exchange's Fee Schedule Regarding Retail Orders); *supra* note 7.

[11] *See* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (''RPI Approval Order'') (SR–BYX–2012–019). *See also* Securities Exchange Act Release Nos. 71249 (January 7, 2014), 79 FR 2229 (January 13, 2014) (SR–BYX–2014–001) (Notice of Filing and Immediate Effectiveness [sic] to Extend the Pilot Period for the Retail Price Improvement Program); and 72730 (July 31, 2014) (SR–BYX–2014–013) (Notice of Filing and Immediate Effectiveness [sic] to Amend Rule 11.24(a)(2) to Include Riskless Principal Orders to the Types of Orders that May Qualify as Retail Orders under the Retail Price Improvement Program).

[12] A ''User'' is defined ''as any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' BYX Rule 1.5(cc).

[13] A ''Retail Price Improvement Order'' is defined in Rule 11.24(a)(3) as an order that consists of non-displayed interest on the Exchange that is priced better than the Protected NBB or Protected NBO by at least $0.001 and that is identified as such. *See* Rule 11.24(a)(3).

[14] The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid (''NBB'') and national best offer (''NBO'', together with the NBB, the ''NBBO'') will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

[15] *See supra* note 5.

[16] Users must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the Member as a ''Retail Order'' comply with the above requirements. *See* Exchange Rule 11.24(b).

[17] The attestation requirements and definition of Retail Order under Exchange Rule 11.24 are substantially similar to Footnote 4 of the EDGX fee schedule. *See* Footnote 4 of the Exchange's Fee Schedule available at *http://www.directedge.com/Trading/EDGXFeeSchedule.aspx.*

[18] An Attributable Order is defined as, ''[a]n order that is designated for display (price and size) including the User's market participant identifier ('MPID').'' *See* Rule 11.9(c)(14).

[19] *See supra* note 7.

[20] A Member's decision on whether to identify their Retail Order as Retail under the proposed rule change will not impact that Member's eligibility to qualify as a Retail Member Organization under Rule 11.24.

[21] 15 U.S.C. 78f.

[22] 15 U.S.C. 78f(b)(5).

[23] *See supra* note 7.

[24] The Exchange understands that, to date, EDGX has not experienced members who attribute orders by their MPID electing to instead attribute their Retail Orders as Retail on the EDGX book feed. On the contrary, the Exchange understands that EDGX members who previously did not attribute their order have chosen to do so as Retail under the EDGX program. Therefore, the Exchange does not anticipate its Members who currently utilize Attributable Orders to now elect that their Retail Orders be attributed as Retail.

identified as a Retail Order. The Exchange also believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would encourage Users who wish to execute against Retail Orders to send additional orders to the Exchange. Therefore, the Exchange believes the increased liquidity would potentially stimulate further price competition for Retail Orders, deepening the Exchange's liquidity pool, supporting the quality of price discovery, and promoting market transparency.

The Exchange believes that allowing a User to designate orders as Retail on either an order-by-order or on a port-by-port basis is consistent with the Act for the same reasons as the proposal as a whole is consistent with the Act. The Exchange believes that either method of designation results in the same message being received and processed by the Exchange's systems, and thus, merely reflects a detail in connection with the implementation of the optional designation.

The proposed rule change is also generally intended to add certain system functionality currently offered by EDGX in order to provide a consistent technology offering for the Exchange and EDGX. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Users of the Exchange that are also participants on EDGX. The proposed rule change would also provide Users with access to functionality that may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed amendments would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendment will not burden intramarket competition because the ability to designate Retail Orders to be identified as Retail on the Exchange's proprietary data feeds, rather than by their MPID, would be open to all Users that wish to send Retail Orders to the Exchange. The Exchange believes the proposed rule change would increase intermarket competition by identifying orders as Retail via the Exchange's proprietary data feeds would enable the Exchange to better compete with other exchanges that offer similar retail order programs.[25] The Exchange believes that the amendment, by increasing the amount of disseminated information regarding Retail Orders, will increase the level of competition around retail executions resulting in better prices for retail investors.

The Exchange reiterates that the proposed rule change is being proposed in the context of the technology integration of the BGM Affiliated Exchanges. Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. In addition, the Exchange believes the proposed rule change will benefit Exchange participants in that it is one of several changes necessary to achieve offering consistent functionality by the BGM Affiliated Exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[26] and Rule 19b–4(f)(6) thereunder.[27] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[28] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[29] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange believes that waiver will provide market participants with additional transparency by disseminating additional order information regarding the types of orders they may interact with when an order is identified as a Retail Order in a timelier manner. The Exchange further believes that waiver will immediately encourage market participants to send additional orders to the Exchange, thereby potentially stimulating further price competition for Retail Orders, deepening the Exchange's liquidity pool, supporting the quality of price discovery, and promoting market transparency. The Commission believes that waiver of the operative delay is consistent with investor protection and the public interest. As a result, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[30]

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–BYX–2014–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

[25] *See* New York Stock Exchange, Inc.'s (''NYSE'') Rule 107C(j). *See also* NYSE MKT LLC (''NYSE MKT'') Rule 107C(j); NYSE Arca, Inc. (''NYSE Arca'') Rule 7.44(j).

[26] 15 U.S.C. 78s(b)(3)(A)(iii).

[27] 17 CFR 240.19b–4(f)(6).

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6)(iii).

[30] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–BYX–2014–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2014–024, and should be submitted on or before October 23, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23479 Filed 10–1–14; 8:45 am]

BILLING CODE 8011–01–P

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73232; File No. SR–CME–2014–30]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Related to 2014 ISDA Definitions

September 26, 2014.

I. Introduction

On August 11, 2014, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–CME–2014–30 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on August 19, 2014.[3] The Commission did not receive comments on the proposed rule change. On September 22, 2014, CME filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

A. Description of the Initial Rule Filing

CME proposes to revise its clearing rules (the ''CDS Product Rules'') to (i) incorporate references to revised Credit Derivatives Definitions, as published by the International Swaps and Derivatives Association, Inc. (''ISDA'') on February 21, 2014 (the ''2014 ISDA Definitions''), which are the successor definitions to the 2003 Credit Derivatives Definitions published by ISDA and as supplemented in 2009 (the ''2003 ISDA Definitions''), and (ii) provide greater clarity with respect to the operation of certain provisions in the CDS Product Rules. CME's implementation of the proposed rule change is intended to coincide with the date on which the credit derivatives market is expected to transition to the 2014 ISDA Definitions (the ''2014 ISDA Definitions Implementation Date'').[5] As such, CME states that the proposed rule change would become effective on September 22, 2014, or on such later date that CME otherwise determines. CME further states that, to the extent that the credit derivatives market does not transition to the 2014 ISDA Definitions, the proposed rule change will not become effective.

CME states that the 2014 ISDA Definitions make changes to a number of the standard terms with respect to CDS contracts when compared to the 2003 ISDA Definitions. According to CME, key changes include the introduction of new provisions relating to: (i) The settlement of credit events relating to financial and sovereign reference entities by delivery of assets other than bonds or loans that constitute deliverable obligations, (ii) transactions that would be impacted by a government bail-in of certain financial reference entities, (iii) standard reference obligations for certain more frequently traded reference entities, and (iv) other technical amendments and improvements. CME states that the impact of the modifications to the 2014 ISDA Definitions relating to (i) the Successor provisions and (ii) the inclusion of Asset Package provisions are of particular note in relation to CME's proposed changes to the CDS Product Rules. CME further states that notwithstanding the proposed changes to the CDS Product Rules relating to Asset Package provisions, none of the CDS products that CME currently clears are anticipated to be subject to and/or impacted by such changes.

CME proposes to revise Chapters 800, 801, 802, 804, and 805 of the CDS Product Rules to align them with the 2014 ISDA Definitions.[6] The proposed changes would primarily provide for the conversion of existing contracts which are currently based on the 2003 ISDA Definitions into contracts based on the 2014 ISDA Definitions in conformance with the anticipated 2014 ISDA Credit Derivatives Definitions Protocol (as amended and/or supplemented from time to time) (the ''2014 Protocol'') and allow for new cleared CDS products to incorporate the 2014 ISDA Definitions. Under CME's proposal, following the 2014 ISDA Definitions Implementation Date, the 2014 ISDA Definitions will apply to both (i) open positions cleared by CME (the ''Converting Contracts'') and (ii) new CDS contracts cleared by CME, consistent with market practice. In furtherance of this, CME proposes to make conforming changes throughout the CDS Product Rules to refer to and/or conform to the 2014 ISDA Definitions. Additionally, CME proposes to add provisions to the CDS

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–72837 (Aug. 13, 2014), 79 FR 49132 (Aug. 19, 2014) (SR–CME–2014–30) (hereinafter referred to as the ''Initial Rule Filing'').

[4] CME filed Amendment No. 1 to the proposed rule change to (i) reflect the exclusion of certain entities referenced in CDX indices from the 2014 ISDA Credit Derivatives Definitions Protocol and (ii) reflect the recent change of the implementation date of the 2014 ISDA Credit Derivatives Definitions Protocol from September 22, 2014, to October 6, 2014, as discussed in more detail below.

[5] At the time of the Initial Rule Filing, CME anticipated that this transition date would be September 22, 2014. In response to subsequent changes in the planned industry-wide implementation date, CME amended its proposal and now plans to accept for clearing contracts referencing the 2014 ISDA Definitions by the time of the updated industry-wide implementation date of October 6, 2014, and to convert certain existing contracts to the 2014 ISDA Definitions as of October 6, 2014. *See supra* note 4 and the discussion of Amendment No. 1 below.

[6] A more detailed description of the proposed changes to the CDS Product Rules is set forth in the notice of the Initial Rule Filing. *See supra* note 3.

Product Rules to provide for the deemed amendment of all Converting Contracts on the 2014 ISDA Definitions Implementation Date. CME also proposes to make a number of non-substantive conforming and numbering changes as part of the proposed rule change.

B. Description of Amendment No. 1

On September 22, 2014, CME filed Amendment No. 1 to the proposed rule change to (i) reflect the exclusion of certain entities referenced in CDX indices [7] from the 2014 Protocol, which will be used by the market to update certain existing bilateral CDS Contracts to the 2014 ISDA Definitions, and (ii) to reflect the recent amendment of the implementation date of the 2014 Protocol from September 22, 2014, to October 6, 2014. CME states that the proposed amendments would avoid a mismatch between open positions in CDS Contracts cleared by CME, which would otherwise be updated to the 2014 ISDA Definitions under the proposed rule change described in the Initial Rule Filing, and the bilateral CDS market, which ultimately decided not to update certain CDS on certain reference entities to be based on the 2014 ISDA Definitions, and will also amend the proposed rule change to the CDS Product Rules described in the Initial Rule Filing to be in line with recent market developments.

As described above, CME's Initial Rule Filing proposes to update its CDS Product Rules to provide for the conversion of all open positions in CDS contracts cleared by CME into contracts based on the 2014 ISDA Definitions (i.e., Converting Contracts). CME states that, at the time of the Initial Rule Filing, there was an understanding in the CDS market that all CDX Component Transactions (as defined in the CDS Product Rules) would be Converting Contracts and, based on this understanding, the proposed rule change in the Initial Rule Filing did not contemplate that certain CDX Component Transactions may continue to reference the 2003 ISDA Definitions post the 2014 ISDA Definitions Implementation Date.

CME states that, subsequent to its submission of the Initial Rule Filing, the market revised the list of reference entities that will be excluded from the 2014 Protocol (the ''Excluded Reference Entity List'') and which will continue to reference the 2003 ISDA Definitions post the 2014 ISDA Definitions Implementation Date, inter alios, by adding to the Excluded Reference Entity List certain entities referenced in CDX Contracts which CME clears and therefore, it will be necessary for the CDS Product Rules to provide for CDX Component Transactions to which the 2003 ISDA Definitions may continue to apply. CME states that, accordingly, certain CDX Contracts which CME clears will, following the 2014 ISDA Definitions Implementation Date, be bifurcated such that certain CDX Component Transactions will continue to reference the 2003 ISDA Definitions (such transactions, ''2003 Definitions Transactions''), and certain other CDX Component Transactions will reference the 2014 ISDA Definitions (such transactions ''2014 Definitions Transactions''). As a result of this bifurcation, CME proposes to split Chapters 800, 802, 804 and 805 of its current CDS Product Rules into separate sub-parts to provide for CDX Component Transactions depending on whether such transactions are 2014 Definitions Transactions or 2003 Definitions Transactions.

In Amendment No. 1, CME proposes to amend the Initial Rule Filing to add to its CDS Product Rules the following sub-parts to provide for CDX Component Transactions that are 2003 Definitions Transactions: Chapters 800: Part: C, 802: Part B, 804: Part C and 805: Part D. CME notes that the labeling of such sub-parts takes into account that other sub-parts to the above-mentioned chapters are concurrently being proposed to the Commission pursuant to CME's proposal to amend its clearing rules to enable it to clear iTraxx contracts.[8] CME also proposes to amend certain definitions in Chapter 800 (Credit Default Swaps: Part A) which were proposed in the Initial Rule Filing to align its implementation of the 2014 ISDA Definitions with the recently adopted approach in the bilateral CDS market. A concise description of the amendments is set out below.

1. Chapter 800 (Credit Default Swaps: Part A)

CME proposes to make conforming changes to the definitions of ''Asset Package Notice'' and ''2014 Definitions Transaction'' in Chapter 800 (Credit Default Swaps: Part A), which were proposed in the Initial Rule Filing, to align these definitions with bifurcations proposed to the Commission pursuant to CME's proposal to amend its clearing rules to enable it to clear iTraxx contracts.[9] In addition, CME also proposes to amend the definitions of ''Implementation Date'' and ''Converting Contract'' in Chapter 800 (Credit Default Swaps: Part A) in light of recent market developments to provide for the amendment of all Converting Contracts on the date on which certain existing contracts are converted to the 2014 ISDA Definitions in accordance with the 2014 Protocol.

2. Chapter 800 (Credit Default Swaps: Part C)

CME proposes to add a sub-part to Chapter 800 entitled ''Credit Default Swaps: Part C.'' Chapter 800: Part C provides the meanings of capitalized terms that are used but not defined within the proposed rules and the location of the meanings of any terms used in the proposed rules but not defined within Chapter 800: Part C. In addition, CME proposes to include CME Rule 80002.C (Interpretation), which provides for the interpretation of certain contractual terms used within the proposed rules, and CME Rule 80003.C (Notices and Clearing House System Failures), which provides for how notices are to be provided by, or to, CME and also for the extension of applicable deadlines for the delivery of notices if CME, or any of its clearing members, is unable to deliver or receive notices due to a failure of the relevant CME internal system. CME notes that proposed CME Rule 80002.C and CME Rule 80003.C are substantially similar to CME Rule 80001 and CME Rule 80002, respectively,[10] that are provided in the currently published Chapter 800 of the CDS Product Rules.

3. Chapter 802 (CDX Index Untranched CDS Contracts: Part B)

CME proposes to add a sub-part to Chapter 802 entitled ''CDX Index Untranched CDS Contracts: Part B.'' CME represents that Chapter 802: Part B is substantially the same as the currently published Chapter 802, with the exception that certain clarifications have been added to make it clear that Chapter 802 has been bifurcated and that Chapter 802: Part B will only apply to 2003 Definitions Transactions. In addition, changes would be made to remove provisions relating to Succession Events and/or Succession Event Resolution Request Dates

[7] Currently, CME offers clearing of (i) the Markit CDX North American Investment Grade Index Series 8 and forward and (ii) the Markit CDX North American High Yield Index Series 13 and forward (collectively, the ''CDX Contracts'').

[8] *See* Securities Exchange Act Release No. 34–72833 (Aug. 13, 2014), 79 FR 48797 (Aug. 18, 2014) (SR–CME–2014–31).

[9] *Id.*

[10] Pursuant to a teleconference with representatives of CME on September 23, 2014, staff in the Division of Trading and Markets has corrected incorrect cross-references to currently published CME Rules 80002 and 80003 contained in CME's filing.

occurring prior to June 20, 2009, as these are historic provisions within the definition of Succession Event Backstop Date that are no longer relevant, and the Appendix to Chapter 802 has been updated to delete expired CDX Contracts.[11]

4. Chapter 804 (CME CDS Risk Committee: Part C)

CME proposes to add a sub-part to Chapter 804 entitled ''CME CDS Risk Committee: Part C'' to apply only in connection with 2003 Definitions Transactions. CME notes that Chapter 804: Part C is substantially similar to the currently published Chapter 804 with the exception that Chapter 804: Part C grants an additional authority to the CDS RC to determine matters of contractual interpretation relevant to market standard documentation incorporated into the terms of a CDS Contract. In addition, CME proposes modifications to the existing CDS Product Rules in order to ensure alignment of the CDS Product Rules with the current market practices (as proposed by ISDA) to clarify the circumstances under which the CDS RC may make such determinations to avoid determinations that are inconsistent with DC determinations, and other conforming, clarification changes and drafting improvements.

5. Chapter 805 (CME CDS Physical Settlement: Part D)

CME proposes to add a sub-part to Chapter 805 entitled ''CME CDS Physical Settlement: Part D.'' Chapter 805: Part D provides for the physical settlement process that will apply as the fallback settlement method with respect to 2003 Definitions Transactions in circumstances where auction settlement does not apply. CME represents that the substance of the new provisions is based on the currently published Chapter 805 of the CDS Product Rules, with some additional features as described in further detail below.

CME Rule 80502.D.A (Matched Pair Notice) would provide additional detail in relation to the matching process. CME states that the additions do not substantively alter the CDS Product Rules, but rather, seek to provide greater clarity with respect to the current matching process and how such process will work in respect of CDS Contracts.

CME Rule 80507.D (Clearing House Guarantee of Matched Pair CDS Contracts) and CME Rule 80508.D (Failure to Perform Under Matched Pair CDS Contracts) would be updated to align the matching process with the general physical settlement provisions of CME as set out in Chapter 7 (Delivery Facilities and Procedures).

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[12] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act[13] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 17A of the Act[14] and the rules thereunder applicable to CME. CME plans to accept for clearing contracts referencing the industry standard 2014 ISDA Definitions by the time of the planned industry-wide implementation on October 6, 2014, and to convert certain existing contracts to the new definitions as of that date. The proposed rule change, which is principally designed to incorporate and implement the 2014 ISDA Definitions, would permit the clearing of both new and existing contracts referencing the new definitions. Additionally, the proposed rule change, as modified by Amendment No. 1, will allow CME to continue to offer clearing of certain CDX Component Transactions that may continue to reference the 2003 ISDA Definitions post the implementation date of the 2014 ISDA Definitions. The Commission therefore believes that the proposed rule change is reasonably designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, consistent with Section 17A(b)(3)(F) of the Act.[15]

IV. Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1

As discussed above, CME submitted Amendment No. 1 to the proposed rule change to (i) reflect the exclusion of certain entities referenced in CDX indices from the 2014 Protocol, which will be used by the market to update certain existing bilateral CDS Contracts to the 2014 ISDA Definitions, and (ii) to reflect the recent change of the implementation date of the 2014 Protocol from September 22, 2014 to October 6, 2014. The Commission believes that the modification by Amendment No. 1 to the proposed rule change as described in the Initial Rule Filing[16] is consistent with the industry protocol, which has been widely accepted by participants in the CDS market, and will (i) permit CME to continue to offer clearing of certain CDX Component Transactions that may continue to reference the 2003 ISDA Definitions post the implementation date of the 2014 ISDA Definitions and (ii) address the necessary change in the timing of the clearing of transactions incorporating the 2014 ISDA Definitions in light of the change in the implementation timing of the industry-wide ISDA protocol, thereby facilitating the trading and clearing of CDS throughout the entire credit derivatives market. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,[17] to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of Amendment No. 1 in the **Federal Register**.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 1 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

[11] Pursuant to a teleconference with representatives of CME on September 23, 2014, staff in the Division of Trading and Markets confirmed that CME is not proposing to add new CDX Contracts to the Appendix to Chapter 802 as incorrectly stated in CME's filing.

[12] 15 U.S.C. 78s(b)(2)(C).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 15 U.S.C. 78q–1.

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] The Initial Rule Filing was published in the **Federal Register** on August 19, 2014, for 21-day comment and the comment period ended on September 9, 2014. The Commission did not receive comments on the Initial Rule Filing.

[17] 15 U.S.C. 78s(b)(2)(C)(iii).

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–CME–2014–30 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–CME–2014–30. 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 CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html*.

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–CME–2014–30 and should be submitted on or before October 23, 2014.

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[18] and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (File No. SR–CME–2014–30), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.[20]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23447 Filed 10–1–14; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78q–1.

[19] 15 U.S.C. 78s(b)(2).

[20] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14132 and #14133]

Michigan Disaster #MI–00046

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Michigan (FEMA–4195–DR), dated 09/25/2014.

Incident: Severe Storms and Flooding.

Incident Period: 08/11/2014 through 08/13/2014.

Effective Date: 09/25/2014.

Physical Loan Application Deadline Date: 11/24/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 06/25/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/25/2014, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Macomb, Oakland, Wayne.

Contiguous Counties (Economic Injury Loans Only):

Michigan: Genesee, Lapeer, Livingston, Monroe, Saint Clair, Washtenaw.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.125
Homeowners Without Credit Available Elsewhere	2.063
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 141326 and for economic injury is 141330.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–23494 Filed 10–1–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14134 and #14135]

Michigan Disaster #MI–00047

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Michigan (FEMA—4195—DR), dated 09/25/2014.

Incident: Severe Storms and Flooding.

Incident Period: 08/11/2014 through 08/13/2014.

Effective Date: 09/25/2014.

Physical Loan Application Deadline Date: 11/24/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 06/25/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the

President's major disaster declaration on 09/25/2014, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Macomb, Oakland, Wayne.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 141346 and for economic injury is 141356.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–23495 Filed 10–1–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14124 and #14125]

Mississippi Disaster #MS–00074

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 09/24/2014.

Incident: Flooding.

Incident Period: 09/11/2014.

Effective Date: 09/24/2014.

Physical Loan Application Deadline Date: 11/24/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 06/24/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Desoto.

Contiguous Counties:

Mississippi: Marshall, Tate, Tunica.

Arkansas: Crittenden.

Tennessee: Shelby.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.125
Homeowners Without Credit Available Elsewhere	2.063
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14124 6 and for economic injury is 14125 0.

The States which received an EIDL Declaration # are Mississippi, Arkansas, Tennessee.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 24, 2014.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–23496 Filed 10–1–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Audit and Financial Management Advisory Committee (AFMAC)

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Audit and Financial Management Advisory Committee (AFMAC).

The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, October 30, 2014, starting at 1:00 p.m. until approximately 4:00 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held at the U.S. Small Business Administration, 409 3rd Street SW., Office of Performance Management and Chief Financial Officer Conference Room, 6th Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the AFMAC. The AFMAC is tasked with providing recommendation and advice regarding the Agency's financial management, including the financial reporting process, systems of internal controls, audit process and process for monitoring compliance with relevant laws and regulations. The purpose of the meeting is to discuss the SBA's Financial Reporting, Audit Findings Remediation, Ongoing OIG Audits including the Information Technology Audit, FMFIA Assurance/A–123 Internal Control Program, Credit Modeling, LMAS Project Status, Performance Management, Acquisition Division Update, Improper Payments and current initiatives.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public, however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the AFMAC must contact Tami Perriello by fax or email, in order to be placed on the agenda. Tami Perriello, Acting Chief Financial Officer, 409 3rd Street SW., 6th Floor, Washington, DC 20416, phone: (202) 205–7420, fax: (202) 481–6194, email: *tami.perriello@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Donna Wood at (202) 619–1608, email: *Donna.Wood@sba.gov;* SBA, Office of Chief Financial Officer, 409 3rd Street SW., Washington, DC 20416. For more information, please visit our Web site at *http://www.sba.gov/aboutsba/sbaprograms/cfo/index.html.*

Dated: September 22, 2014.

Diana L. Doukas,

White House Liaison.

[FR Doc. 2014–23505 Filed 10–1–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 8892]

In the Matter of the Designation of Lavdrim Muhaxheri, also known as Ebu Abdullah el Albani, also known as Abu Abdullah al Kosova, also known as Abu Abdallah al-Kosovi, also known as Abu Abdallah al-Kosovo as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Lavdrim Muhaxheri, also known as Ebu Abdullah el Albani, also known as Abu Abdullah al Kosova, also known as Abu Abdallah al-Kosovi, also known as Abu Abdallah al-Kosovo, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 17, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–23534 Filed 10–1–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 8890]

In the Matter of the Designation of Nusret Imamovic, also known as Nusret Sulejman Imamovic as a Specially Designated Global Terrorist pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine the individual known as Nusret Imamovic, also known as Nusret Sulejman Imamovic, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 23, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–23535 Filed 10–1–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 8891]

In the Matter of the Designation of Murad Margoshvili, also known as Muslim Abu al-Walid al-Shishani, also known as Muslim al-Shishani, also known as Murad Muslim Akhmetovich Margoshvili, also known as Murad Akhmetovich Margoshvili, also known as Murad Madaev, also known as Muslim, also known as Murad Akhmadovich Madayev, also known as Muslim Georgia, also known as Lova Margoshvili, also known as Murad Madayev, also known as Lova Madaev, also known as Muslim Akmadovich Margoshvili, also known as Muslim Akhmetovich Georgik Margoshvili, also known as Dzhorzhik, also known as Dzhordzhik, also known as Kus, also known as Artur, as a Specially Designated Global Terrorist pursuant to Section 1(b) of Executive Order 13224, as amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Murad Margoshvili, also known as Muslim Abu al-Walid al-Shishani, also known as Muslim al-Shishani, also known as Murad Muslim Akhmetovich Margoshvili, also known as Murad Akhmetovich Margoshvili, also known as Murad Madaev, also known as Muslim, also known as Murad Akhmadovich Madayev, also known as Muslim Georgia, also known as Lova Margoshvili, also known as Murad Madayev, also known as Lova Madaev, also known as Muslim Akmadovich Margoshvili, also known as Muslim Akhmetovich Georgik Margoshvili, also known as Dzhorzhik, also known as Dzhordzhik, also known as Kus, also known as Artur, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 19, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–23530 Filed 10–1–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 8889]

Foreign Affairs Policy Board Meeting; Notice; Closed Meeting

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the Department of State announces a meeting of the Foreign Affairs Policy Board to take place on October 16, 2014, at the Department of State, Washington, DC.

The Foreign Affairs Policy Board reviews and assesses: (1) Global threats and opportunities; (2) trends that implicate core national security interests; (3) tools and capacities of the civilian foreign affairs agencies; and (4)

priorities and strategic frameworks for U.S. foreign policy. Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App § 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this meeting will be closed to the public as the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526.

For more information, contact Samantha Raddatz at (202) 647–2972.

Dated: September 22, 2014.

Andrew McCracken,

Designated Federal Officer.

[FR Doc. 2014–23536 Filed 10–1–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Projects of National and Regional Significance Survey

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT)

ACTION: Notice.

SUMMARY: This notice announces that the Projects of National and Regional Significance (PNRS) survey required under section 1120 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) will re-open on October 2, 2014. The original survey period ran from May 29, 2014, to June 30, 2014. However, in order to develop a more comprehensive catalogue of Projects of National and Regional Significance to assist DOT in planning and investment decisionmaking, DOT will re-open the survey for 45 calendar days, including Federal holidays through November 17, 2014. This will provide interested parties with an additional opportunity to submit projects for consideration and supplement existing submissions. The DOT may not consider responses submitted after November 17, 2014, so as to allow DOT to deliver the MAP–21 mandated report to Congress within a reasonable timeframe.

DATES: The PNRS survey will re-open from October 2, 2014 to November 17, 2014.

ADDRESSES: To respond to the survey go to: *http://www.ops.fhwa.dot.gov/Freight/infrastructure/nat_reg_sig/index.htm*. This Web site contains the survey instrument as well as details on the survey background, how the survey results will be used, and who is eligible to respond. Please note that entering the survey link does not require you to submit any information.

For those who have already responded to the original PNRS survey, the re-opening of the survey does not affect your previously submitted responses. However, DOT strongly encourages those who participated in the original survey to review their prior submissions to determine if those submissions should be augmented with additional information. You may choose to resubmit your survey response, add more supporting documentation, withdraw it, or leave it as previously submitted.

FOR FURTHER INFORMATION CONTACT: For questions about the PNRS survey, contact Tamiko Burnell, FHWA Office of Freight Management and Operations, (202) 366–1200, or via email at *tamiko.burnell@dot.gov*. For legal questions, contact Alla Shaw, FHWA Office of the Chief Counsel, (202) 366–1042 or via email at *Alla.Shaw@dot.gov*. Business hours for FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve a copy of the notice through the Federal eRulemaking portal at *http://www.regulations.gov*. The Web site is available 24 hours each day, every day of the year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded from Office of the Federal Register's Web site at: *http://www.archives.gov/federal_register* and the Government Printing Office's Web site at: *http://www.gpoaccess.gov*.

Background

Section 1301 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; 119 Stat. 1144) established a program to provide grants to States for PNRS to improve the safe, secure, and efficient movement of people and goods throughout the United States and to improve the health and welfare of the national economy.

Section 1120 of MAP–21 amended the PNRS program, including authorizing $500 million to carry out the program; however, no funds were appropriated for the program. Section 1120 of MAP–21 requires DOT to develop a report to Congress that contains a comprehensive list of each PNRS. The comprehensive list will enable the Secretary of Transportation to classify PNRS and to develop recommendations on financing for eligible project costs.

On May 29, 2014, FHWA, on behalf of DOT, launched the initial PNRS survey that closed on June 30, 2014. The survey was emailed to stakeholders in the categories identified as ''eligible applicants'' in MAP–21 (State departments of transportation (State DOT), tribal governments, and transit agencies). On June 3, 2014, FHWA hosted a Webinar to inform stakeholders on the background and purpose of the PNRS survey, program eligibility, and survey content.

Twenty-seven States and several transit authorities participated in the original survey, submitting a total of 143 projects. While over half of the 50 States participated, many regions of the country provided limited or no participation. Therefore, the overall results were less than comprehensive.

Purpose of This Notice

The purpose of this notice is fourfold: (1) To define the PNRS Survey and project eligibility; (2) to re-open the PNRS Survey for a period of 45 calendar days (including Federal holidays); (3) to establish how DOT will conduct outreach with stakeholders and potential respondents; and (4) to provide additional guidance on responding to survey questions.

PNRS Survey

Section 1120 of MAP–21 requires the DOT to develop a report to Congress that contains a comprehensive list of each project of national and regional significance that has been compiled through a survey of State DOTs. The comprehensive list will enable the Secretary to classify PNRS and to develop recommendations on financing for eligible project costs. For purposes of the survey, Section 1120 of MAP–21 defines PNRS as projects that:

- Significantly improve the national or regional performance of the Federal-aid highway system;
- Generate national economic benefits, including increased access to jobs and labor;
- Reduce long-term congestion and increase the speed, reliability, and accessibility of the movement of people or freight;
- Improve transportation safety, including reducing transportation accidents, serious injuries, and fatalities; and
- Can be supported by an acceptable degree of non-Federal financial commitments.

Using the PNRS project definitions above, the DOT is conducting a nationwide survey. Responses to the survey are voluntary and will be used by DOT to compile and submit the

required PRNS Report to Congress. The final survey will list which entities participated in the survey.

Survey respondents are asked to provide a project description and information on how the project will: Improve national or regional highway system performance; generate economic benefits that include increased access to jobs; reduce long-term congestion including impacts in the State, region, and the U.S.; and improve safety including reducing accidents, injuries, and fatalities. The survey also requests project cost information, including the level of non-Federal funding sources used to construct, maintain, and operate the infrastructure facility. Respondents are strongly encouraged to provide any available documentation and additional information to support any prior responses.

The survey questions were cleared by the Office of Management and Budget (OMB Control No. 2125–0642). The survey can be viewed at *http://www.ops.fhwa.dot.gov/Freight/infrastructure/nat_reg_sig/index.htm*.

Eligible Applicants and Projects

Entities defined by Section 1120 of MAP–21 as eligible applicants for PNRS program funding are: A State DOT or group of State DOTs; a transit agency; a tribal government or consortium of tribal governments; or a multi-State or multi-jurisdictional group of State DOTs, transit agencies or tribal governments.

Entities that are not among those groups may respond directly to the survey or work with State DOTs, transit agencies, or tribal governments to submit responses to the survey. Such entities could include metropolitan planning organizations, seaport authorities, railroads, cities, counties, coalitions or joint power authorities of local governments, or economic development organizations which have responsibility for planning and/or implementing infrastructure projects.

Eligible projects are any surface transportation project or set of integrated surface transportation projects closely related in the function they perform, which are eligible to receive Federal assistance under 23 U.S.C. (Section 1301 of SAFETEA–LU). Additionally, a project's total cost must be at least $500 million or 50 percent of the amount of Federal highway assistance funds apportioned to the State in which the project is located. (Section 1120 of MAP–21). A list of each State's apportionments can be found at *http://ops.fhwa.dot.gov/freight/infrastructure/nat_reg_sig/pnrs_survey/pnrs_aprt_13*.

In addition to traditional highway and transit infrastructure projects, other examples of eligible PNRS projects may include public or private rail facilities providing benefits to highway users; surface transportation infrastructure modifications to facilitate intermodal interchange, transfer, and access into and out of ports; and other activities eligible under 23 U.S.C.

In general, projects eligible for the Transportation Infrastructure Finance and Innovation Act (TIFIA) program are eligible for the PNRS program. For more information on PNRS project eligibility respondents should refer to the PNRS final rule: *http://www.regulations.gov/#!documentDetail;D=FHWA-2005-23393-0027*. The TIFIA legislation can be found at 23 U.S.C. 601(a)(12): *http://www.gpo.gov/fdsys/pkg/USCODE-2012-title23/html/USCODE-2012-title23-chap6-sec601.htm*.

Outreach

The DOT will conduct extensive outreach to reach as many stakeholders as possible. The outreach by DOT staff is aimed at achieving completeness and consistency in survey responses.

An informational Webinar is scheduled for October 6, 2014. You may register for the Webinar at *http://www.nhi.fhwa.dot.gov/resources/webconference/web_conf_learner_reg.aspx?webconfid=27944*. The Webinar will be recorded and made available for future viewing online at *http://ops.fhwa.dot.gov/freight/infrastructure/nat_reg_sig/index.htm*.

Survey Guidelines

The PNRS Survey can be accessed and downloaded from the following Web site: *http://www.ops.fhwa.dot.gov/Freight/infrastructure/nat_reg_sig/index.htm*. Additional guidance has been included for survey respondents to help clarify what is being requested in survey questions 8–11 and 16. Listed below is the clarifying language included in the survey instructions.

#8. Briefly describe how the project will significantly improve performance of the Federal-aid highway system nationally, or regionally. (limited to 1500 characters) To the extent possible, please provide specific evidence or information about the ways this project (which may include non-highway projects) will positively change any performance-related features of the Federal-aid highway system—and the extent of that impact. Quantitative information is preferred. (Survey Question 8)

#9. Briefly describe how the project will generate national economic benefits that reasonably exceed the costs of the project, including increased access to jobs, labor, and other critical economic inputs. (limited to 1500 characters) To the extent possible, please provide specific citations or evidence linking the completion of this particular project (regardless of whether it is part of a larger facility or non-highway project) to positive changes in the national economy. Quantitative information is preferred. (Survey Question 9)

#10. Briefly describe how the project will reduce long-term congestion, including impacts in the State, region, and the United States, and increase speed, reliability, and accessibility of the movement of people or freight. (limited to 1500 characters) To the extent possible, please provide specific citations or evidence linking the completion of this particular project (regardless of whether it is part of a larger facility) to positive changes in current or expected congestion, such as reduced demand on the Federal-aid highway system due to improvement of modal alternatives including transit service and intercity passenger rail, or increased use of intelligent transportation systems, and the extent of that impact. Quantitative information is preferred. If congestion is not an issue this project will address, please indicate that, as well as any related level of service issues (e.g., reliability, accessibility) that may be affected positively by this project. (Survey Question 10)

#11. Briefly describe how the project will improve transportation safety, including reducing transportation accidents, and serious injuries and fatalities. (limited to 1500 characters) To the extent possible, please provide specific citations or evidence linking the completion of this particular project (regardless of whether it is part of a larger facility) to positive changes in safety for the region or nation. Quantitative information is preferred. (Survey Question 11)

#16. Please upload any information that would help to support your survey response. If you have multiple files please combine them into one zip file. All common file types (e.g., PDF, Word, Excel, PPT) are accepted. The maximum file size that can be uploaded is 16MB. If the supporting documents are not able to be loaded into survey tool, send directly to: *PNRSSurvey@dot.gov*. Documents sent by email must have the same project title as listed in question six on the survey. Any project-related video offered to satisfy the questions in this survey must have hard copy documentation to support the video. (Survey Question 16)

Planned Schedule

The following is the approximate schedule for re-opening of the PNRS Survey. Key milestones include:

1. October 2, 2014: Re-Open Survey;

2. October 2, 2014 to November 17, 2014, conduct outreach, technical assistance and follow-up;

3. October 6, 2014, Conduct Informational Webinar;

4. November 17, 2014: Close Survey

Authority: Section 1120 of Public Law 112–141.

Issued on: September 23, 2014.

Gregory G. Nadeau,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2014–23420 Filed 10–1–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits; Special Permit Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 3, 2014.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

For Further Information

Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 5, 2014.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
		NEW SPECIAL PERMITS		
16232–N		Linde Gas North America LLC Murray Hill, NJ.	49 CFR 171.23 (a)(1) 171.23(a)(2)(ii), 171.23(a)(3), 173.301(f)(3), 173.301(g).	To authorize the transportation in commerce of non-DOT cylinders containing a certain Division 2.2 compressed gas (modes 1, 2, 3).
16238–N		Entegris, Inc. Billerica, MA.	49 CFR 173.212, 173.213, 173.240, 173.241, 176.83.	To authorize the transportation in commerce of certain Division 4.1 and Division 4.2 hazardous materials in alternative packagings with alternative segregation by cargo vessel (modes 1, 2, 3, 4).
16241–N		Linde Gas North America LLC Murry Hill, NJ.	49 CFR 173.301(f)(3), 173.301(g)	To authorize the transportation in commerce of hydrogen chloride, anhydrous in cylinders without pressure relief devices (modes 1, 2, 3).
16242–N		E.I. duPont de Nemours and Company Wilmington, DE.	49 CFR 173.32(a)(2)	To authorize the transportation in commerce of two portable tanks that have been filled after the prescribed periodic inspection was due (mode 1).

[FR Doc. 2014–23476 Filed 10–1–14; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of actions on Special Permit Applications

AGENCY: Pipeline And Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on Special Permit Applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, Subpart B), notice is hereby given of the actions on special permits applications in (August to August 2014) The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on September 05, 2014.

Donald Burger,

Chief, Special Permits and Approvals Branch.

S.P No.	Applicant	Regulation(s)	Nature of special permit thereof
MODIFICATION SPECIAL PERMIT GRANTED			
15854–M	Colmac Coil Manufacturing, Inc., Colville, WA.	49 CFR 173.222, IMDG Code, Special Provision 301.	To modify the special permit originally issued on an emergency basis to routine with a two year renewal as well as to increase the size of authorized units.
11826–M	Linde Gas North America, LLC., Murray Hill, NJ.	49 CFR 173.302(a)(5)	To modify the special permit to authorize the requalification of cylinders manufactured in accordance with DOT–SP 12399 and 14546, and the use of ultrasonic requalification.
11536–M	Boeing Company, The Los Angeles, CA.	49 CFR 173.102 Spec. Prov. 101, 173.24(g), 173.62, 173.185, 173.202; 173.211, and 173.304.	To modify the special permit to authorize new shipping and storage containers.
11650–M	Autoliv ASP, Inc., Ogden, UT	49 CFR 173.301(a)(1), and 173.302a(a).	To modify the special permit to authorize an increase to the maximum service pressure.
15860–M	Apple Inc., Cupertino, CA	49 CFR 173.185(a)	To modify the special permit to authorize cargo aircraft as a mode of transportation.
NEW SPECIAL PERMIT GRANTED			
16115–N	Advanced Cooling Technologies, Inc., Lancaster, PA.	49 CFR 173.301(f), 137.302(a)(1), 173.304(a)(2).	To authorize the transportation of anhydrous ammonia in alternative packaging (heat pipes). (modes 1, 3, 4).
16102–N	Brenntag Mid-South, Inc., Henderson, KY.	49 CFR 173.3(e)(2)	To authorize the transportation in commerce of a DOT 106A500 multi-unit tank car tank containing chlorine or sulfur dioxide that has developed a leak in the valve or fusible plug that has been temporarily repaired using a Chlorine Institute ''B'' Kit, Edition 11. (mode 1).
16122–N	ATK LAUNCH SYSTEMS INC., Corrine, UT.	49 CFR 172.320, 173.54(a), 173,56(b), 175.57, 173.58 and 173.60.	To authorizes the transportation in commerce of not more than 25 grams of Division 1.4 materials and pyrotechnic materials in a special shipping container. (modes 1, 3, 4).
16166–N	Sparkle International, Inc., Bedford, OH.	49 CFR 173.6(a)(1)(ii)	To authorize the transportation in commerce of a Class 8, PG II material in a custom designed packaging as a material of trade when the mass or capacity limits are exceeded. (mode 1).
EMERGENCY SPECIAL PERMIT GRANTED			
16209–M	Atlas Air, Inc., Purchase, NY	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27, and 175.30(a)(1).	To modify the special permit to increase the net explosive weight to 1778 pounds. (modes 1, 4).
16067–N	E.I. duPont de Nemours and Company, WILMINGTON, DE.	49 CFR 171.25(c)	To authorize the transportation in commerce of a Division 2.2 compressed gas in non-DOT specification bulk packaging. (modes 1, 3).
16171–N	Ozark Automotive Distributors, Springfield, MO.	49 CFR 173.159	To authorize the transportation in commerce of batteries in alternative packaging by motor vehicle. (mode 1).
16209–N	Atlas Air, Inc., Washington, DC.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27, and 175.30(a)(1).	To authorize the transportation in commerce of forbidden explosives by cargo aircraft. (modes 1, 4).
NEW SPECIAL PERMIT WITHDRAWN			
16206–N	Demex International Inc., Picayune, MS.	49 CFR 176.116(e)	To authorize the transportation in commerce of certain Class 1 materials by vessel in an alternative stowage configuration. (mode 3).
EMERGENCY SPECIAL PERMIT WITHDRAWN			
16197–N	Controlled Demolition, Inc., Phoenix, MD.	49 CFR §§ 173.163, 173.212, 173.227, 173.244, 173.304, 173.304a, 176.3(a) and 176.27(a).	To authorize the one-way transportation in commerce by cargo vessel certain hazardous materials in alternative packaging. (mode 3).

DENIED

11834–M	Request by Ashland, Inc. Dublin, OH, August 27, 2014. To modify the special permit to authorize two Class 8 materials.
12412–M	Request by Chemquest, Inc. Lakeville, MN, August 01, 2014. To modify the special permit to allow residue to remain in hoses while in transportation.
6263–M	Request by Amtrol, Inc. West Warwick, RI, August 27, 2014. To modify the special permit to provide relief from 173.306(g).
11156–M	Request by Buckley Powder Co. Englewood, CO, August 27, 2014. To modify the special permit to authorize cargo vessel as an authorized mode of transport.
16040–N	Request by Multistar Ind., Inc. Othello, WA, August 27, 2014. To authorize the transportation in commerce of certain portable tanks and cargo tanks containing anhydrous ammonia that do not have manufacturer's data reports required by 49 CFR 180.6050).

16184–N	Request by Pacific Scientific PSEMC Hollister, CA August 27, 2014. Special Permit Regarding Outer Container P/N 161454.
14924–M	Request by Explosive Service International Ltd., Baton Rouge, LA August 27, 2014. To modify the special permit to waive the requirement for a steel deck on a vessel.
14924–M	Request by Poe, William T & Associates Inc. DBA Explosive Service International Ltd. Baton Rouge, LA August 27, 2014. To remove the Division 1.1 detonators from the permit and authorize an aluminum deck when a 2 inch air gap is provided between the deck and the container.

[FR Doc. 2014–23478 Filed 10–1–14; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of 11 individuals and 1 entity whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13224 and whose names have been added to OFAC's list of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: OFAC's actions described in this notice were effective September 24, 2014.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Notice of OFAC Actions

On September 24, 2014, OFAC blocked the property and interests in property of the following 11 individuals and 1 entity pursuant to E.O. 13224, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism'':

Individuals

1. 'ABD AL–SALAM, Ashraf Muhammad Yusuf 'Uthman (a.k.a. 'ABD AL–SALAM, Ashraf Muhammad Yusif; a.k.a. 'ABD–AL–SALAM, Ashraf Muhammad Yusif 'Uthman; a.k.a. 'ABD–AL–SALAM, Ashraf Muhammad Yusuf; a.k.a. ''Ibn al-Khattab''; a.k.a. '' Khattab''), Syria; DOB 01 Jan 1984 to 31 Dec 1984; POB Iraq; nationality Jordan; Passport 486298 (Jordan); alt. Passport K048787; National ID No. 28440000526 (Qatar) (individual) [SDGT].

2. 'ABD AL–SALAM, 'Abd al-Malik Muhammad Yusuf 'Uthman (a.k.a. 'ABD–AL–SALAM, 'Abd al-Malik Muhammad Yusif; a.k.a. "'Umar al-Qatari''; a.k.a. "'Umar al-Tayyar''); DOB 13 Jul 1989; nationality Jordan; Passport K475336 (Jordan) issued 31 Aug 2009 expires 30 Aug 2014; National ID No. 28940000602 (Qatar) (individual) [SDGT].

3. SUKIRNO, Bambang (a.k.a. ''Abu Zahra''; a.k.a. ''Pak Zahra''); DOB 05 Apr 1975; POB Indonesia; nationality Indonesia; Passport A2062513 (Indonesia) (individual) [SDGT].

4. SANTOSO, Wiji Joko (a.k.a. SANTOSO, Wijijoko; a.k.a. ''ABU SEIF''; a.k.a. ''AL–JAWI, Abu Seif''); DOB 14 Jul 1975; POB Rembang, Jawa Tengah, Indonesia; nationality Indonesia; Passport A2823222 (Indonesia) issued 28 May 2012 expires 28 May 2017 (individual) [SDGT].

5. PERSHADA, Angga Dimas (a.k.a. PERSADA, Angga Dimas; a.k.a. PERSADHA, Angga Dimas; a.k.a. PRASONDHA, Angga Dimas); DOB 04 Mar 1985; POB Jakarta, Indonesia; nationality Indonesia; Passport W344982 (Indonesia) (individual) [SDGT].

6. AL–HARZI, Tariq Bin-Al-Tahar Bin Al Falih Al-'Awni (a.k.a. AI–HARZI, Tariq Bin Tahir Bin Al-Falih Al-Auni; a.k.a. AI–HARZI, Tariq Tahir Falih AI-Awni; a.k.a. AL–HARAZI, Tarik Bin al-Falah al-Awni; a.k.a. AL–HARZI, Tariq Tahir Faleh Al-Awni; a.k.a. AL–TUNISI, Abu 'Umar; a.k.a. AL–TUNISI, Tariq; a.k.a. AL–TUNISI, Tariq Abu 'Umar; a.k.a. AL–TUNISI, Tariq Abu Umar; a.k.a. EL HARAZI, Tarek Ben El Felah El Aouni; a.k.a. HARZI, Tariq Tahir Falih 'Awni; a.k.a. ''HOUDOUD, Abu Omar''); DOB 03 May 1982; alt. DOB 05 Mar 1982; alt. DOB 1981; POB Tunis, Tunisia; Passport Z–050399 (individual) [SDGT].

7. AL–FADHIL, 'Abd al-Aziz Aday Zimin (a.k.a. AL–FADHALI, 'Abdalaziz 'Ad'ai Samin Fadhli; a.k.a. AL–FADHL, 'Abd al-Aziz Udai Samin; a.k.a. AL–FADHLI, 'Abd al-Aziz 'Adhay Zimin; a.k.a. AL–FADHLI, 'Abd al-Aziz Udai Samin); DOB 27 Aug 1981; POB Kuwait; Identification Number 281082701081 (individual) [SDGT].

8. AL–SHAMMARI, Hamad Awad Dahi Sarhan (a.k.a. ''AL–KUWAITI, Abu Uqlah''); DOB 31 Jan 1984; citizen Kuwait; Passport 155454275 (Kuwait); Identification Number 284013101406 (Kuwait) (individual) [SDGT].

9. BATIRASHVILI, Tarkhan Tayumurazovich (a.k.a. AL–SHISHANI, Abu Umar; a.k.a. AL–SHISHANI, Omar; a.k.a. BATIRASHVILI, Tarkhan; a.k.a. BATYRASHVILI, Tarkhan Tayumurazovich; a.k.a. SHISHANI, Omar; a.k.a. SHISHANI, Umar; a.k.a. ''Abu Hudhayfah''; a.k.a. ''Abu Umar''; a.k.a. ''Chechen Omar''; a.k.a. ''Omar the Chechen''; a.k.a. ''Omer the Chechen''; a.k.a. ''Umar the Chechen''); DOB 11 Jan 1986; alt. DOB 1982; POB Akhmeta, Village Birkiani, Georgia; citizen Georgia; Passport 09AL14455 (Georgia) expires 26 Jun 2019; National ID No. 08001007864 (Georgia) (individual) [SDGT].

10. HASAR, Fatih (a.k.a. ''AL–TURKI, Ubayd''); DOB 01 Sep 1989; POB Puturge, Turkey; citizen Turkey; National ID No. 56287253110 (individual) [SDGT].

11. AL–BAKR, Ibrahim 'Isa Hajji Muhammad (a.k.a. AL–BAKAR, Ibrahim 'Issa; a.k.a. AL–BAKAR, Ibrahim 'Issa Haji Muhammad; a.k.a. ALBAKER, Ibrahim Issa Hijji Mohd; a.k.a. AL–BAKR, Ibrahim; a.k.a. AL–BAKR, Ibrahim 'Isa Haji; a.k.a. ''Abu Khalil''); DOB 12 Jul 1977; POB Qatar; nationality Qatar; Passport 01016646 (Qatar) (individual) [SDGT].

Entity

1. HILAL AHMAR SOCIETY INDONESIA (a.k.a. HILAL AHMAR SOCIETY OF INDONESIA; a.k.a. INDONESIA HILAL AHMAR SOCIETY FOR SYRIA; a.k.a. YAYASAN HILAL AHMAR), Lampung, Indonesia; Jakarta, Indonesia; Semarang, Indonesia;

Yogyakarta, Indonesia; Solo, Indonesia; Surabaya, Indonesia; Makassar, Indonesia [SDGT].

Dated: September 24, 2014.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2014–23526 Filed 10–1–14; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Applications for the IRS Advisory Committee on Tax Exempt and Government Entities

AGENCY: Internal Revenue Service (IRS); Tax Exempt and Government Entities Division, Treasury.

ACTION: Notice and request for applicants or nominations.

SUMMARY: The Internal Revenue Service (IRS) is requesting applications for membership to serve on the Advisory Committee on Tax Exempt and Government Entities (ACT). Applications will be accepted for the following vacancies, which will occur in June 2015: Two (2) Employee Plans; two (2) Exempt Organizations; one (1) Indian Tribal Governments; and two (2) Tax Exempt Bonds. To ensure appropriate balance of membership, final selection from qualified candidates will be determined based on experience, qualifications, and other expertise. Members of the ACT may not be federally registered lobbyists.

DATES: Written applications or nominations must be received on or before November 3, 2014.

ADDRESSES: Send all applications and nominations to one of the following: (a) Email—*Mark.F.O'Donnell@irs.gov;* (b) Fax: 877–801–7395; (c) U.S. Mail—Mark O'Donnell, Internal Revenue Service, Designated Federal Officer, TE/GE Communications and Liaison; 1111 Constitution Ave. NW; SE:T:CL—NCA 676; Washington, DC 20224.

Application: Applicants must use the ACT Application Form (*Form 12339–C*) on the IRS Web site (*IRS.gov*). Applications should describe and document the proposed member's qualifications for membership on the ACT. Applications should also specify the vacancy for which they wish to be considered.

FOR FURTHER INFORMATION CONTACT: Mark O'Donnell (202) 317–8632 (not a toll-free number) or by email at *Mark.F.O'Donnell@irs.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committee on Tax Exempt and Government Entities (ACT), governed by the Federal Advisory Committee Act, Public Law 92–463, is an organized public forum for discussion of relevant employee plans, exempt organizations, tax-exempt bonds, and federal, state, local, and Indian tribal government issues between officials of the IRS and representatives of the above communities. The ACT enables the IRS to receive regular input with respect to the development and implementation of IRS policy concerning these communities. ACT members present the interested public's observations about current or proposed IRS policies, programs, and procedures, as well as suggest improvements. ACT members shall be appointed by the Secretary of the Treasury and shall serve two-year terms. Terms can be extended for an additional year. ACT members will not be paid for their time or services. ACT members will be reimbursed for their travel-related expenses to attend working sessions and public meetings, in accordance with 5 U.S.C. 5703. The Secretary of the Treasury invites those individuals, organizations, and groups affiliated with employee plans, exempt organizations, tax-exempt bonds and federal, state, local and Indian tribal governments to nominate individuals for membership on the ACT. Nominations should describe and document the proposed member's qualifications for ACT membership, including the nominee's past or current affiliations and dealings with the particular community or segment of the community that he or she would represent (such as, employee plans). Nominations should also specify the vacancy for which they wish to be considered. The Department of the Treasury seeks a diverse group of members representing a broad spectrum of persons experienced in employee plans, exempt organizations, tax-exempt bonds and federal, state, local and Indian tribal governments. Nominees must go through a clearance process before selection by the Department of the Treasury. In accordance with the Department of the Treasury Directive 21–03, the clearance process includes, among other things, pre-appointment and annual tax checks, and an FBI criminal and subversive name check, fingerprint check, and security clearance.

Dated: September 29, 2014.

Mark F. O'Donnell,

Designated Federal Officer, Tax Exempt and Government Entities Division, Internal Revenue Service.

[FR Doc. 2014–23543 Filed 10–1–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0049]

Proposed Information Collection (Approval of School Attendance) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information necessary to determine entitlement to compensation and pension benefits for a child between the ages of 18 and 23 attending school.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 1, 2014.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0049'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility;

(2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles

a. Request for Approval of School Attendance, VA Form 21–674 and 21–674c.

b. School Attendance Report, VA Form 21–674b.

OMB Control Number: 2900–0049.

Type of Review: Revision of a currently approved collection.

Abstract: Recipients of disability compensation, dependency and indemnity compensation, disability pension, and death pension are entitled to benefits for eligible children between the ages of 18 and 23 who are attending school. VA Forms 21–674, 21–674c and 21–674b are used to confirm school attendance of children for whom VA compensation or pension benefits are being paid and to report any changes in entitlement factors, including marriages, a change in course of instruction and termination of school attendance.

Affected Public: Individuals or households.

Estimated Annual Burden

a. VA Forms 21–674 and 674c—34,500 hours.

b. VA Form 21–674b—3,292 hours.

Estimated Average Burden per Respondent

a. VA Forms 21–674 and 674c—15 minutes.

b. VA Form 21–674b—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents

a. VA Forms 21–674 and 674c—138,000 hours.

b. VA Form 21–674b—39,500 hours.

Dated: September 29, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23500 Filed 10–1–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0061]

Proposed Information Collection (Request for Supplies (Chapter 31—Vocational Rehabilitation)); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether supplies requested for a veteran's rehabilitation program are necessary.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 1, 2014.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0061'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Supplies (Chapter 31—Vocational Rehabilitation), VA Form 28–1905m.

OMB Control Number: 2900–0061.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 28–1905m is used to request supplies for Veterans in rehabilitation programs. The official at the facility providing rehabilitation services to veterans completes the form and certifies that the veteran needs the supplies for his or her program, and do not have the requested item in his or her possession.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 16,000 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 16,000.

Dated: September 29, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23501 Filed 10–1–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0353]

Proposed Information Collection (Certification of Lessons Completed) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed

revision of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed report the number of correspondence course lessons completed and for correspondence schools to report the number of lessons serviced.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 1, 2014.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0353'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certification of Lessons Completed, VA Forms 22–6553b and 22–6553b–1.

OMB Control Number: 2900–0353.

Type of Review: Revision of a currently approved collection.

Abstract: Students enrolled in a correspondence school complete VA Forms 22–6553b and 22–6553b–1 to report the number of correspondence course lessons completed and forward the forms to the correspondence school for certification. School official certifies the number of lessons serviced and submits the forms to VA for processing. Benefits are payable based on the data provided on the form. Benefits are not payable when students interrupt, discontinue, or complete the training. VA uses the data collected to determine the amount of benefit is payable.

Affected Public: Individuals or households, and Business or other for-profit.

Estimated Annual Burden: 109 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: An average of 3 responses per respondent annually.

Estimated Number of Respondents: 217.

Annual Number of Respondents: 217.

Annual Number of Responses Annually per Respondent: 3.

Estimated Number of Responses: 651.

Dated: September 29, 2014.

By direction of the Secretary:

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23504 Filed 10–1–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0678]

Proposed Information Collection (Agreement to Train on the Job Disabled Veterans) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to assure that on the job training establishments are providing veterans with the appropriate rehabilitation training.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 1, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0678'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Agreement to Train on the Job Disabled Veterans, VA Form 28–1904.

OMB Control Number: 2900–0678.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1904 is a written agreement between an on the job training (OJT) establishments and VA. The agreement is necessary to ensure that OJT is providing claimants with the appropriate training and supervision, and VA's obligation to provide claimants with the necessary tools, supplies, and equipment for such training.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 150 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 600.

Dated: September 29, 2014.

By direction of the Secretary:

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23516 Filed 10–1–14; 8:45 am]

BILLING CODE 8302–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0695]

Proposed Information Collection (Application for Reimbursement of Licensing or Certification Test Fees) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine an applicant's eligibility for reimbursement of licensing and certification test fees.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 1, 2014.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0695'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Reimbursement of Licensing or Certification Test Fees, (38 U.S.C. Chapters 30, 32, and 35; 10 U.S.C. Chapters 1606 & 1607), VA Form 22–0803.

OMB Control Number: 2900–0695.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 22–0803 to request reimbursement of licensing or certification fees paid.

Affected Public: Individuals or households.

Estimated Annual Burden: 408 hours.

Frequency of Response: 1 Annually.

Estimated Average Burden per Respondents: 15 minutes.

Estimated Annual Responses: 1,631.

Dated: September 29, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23518 Filed 10–1–14; 8:45 am]

BILLING CODE 8302–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0005]

Proposed Information Collection (Application for Dependency and Indemnity Compensation by Parent(s) (Including Accrued Benefits and Death Compensation) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant's eligibility for dependency and indemnity compensation, death compensation, and/or accrued benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 1, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0005'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Dependency and Indemnity Compensation by Parent(s), (Including Accrued Benefits and Death Compensation), VA Form 21P–535.

OMB Control Number: 2900–0005.

Type of Review: Revision of a currently approved collection.

Abstract: Surviving parent(s) of Veterans whose death was service connected complete VA Form 21P–535 to apply for dependency and indemnity compensation, death compensation, and/or accrued benefits. The information collected is used to determine the claimant's eligibility for death benefits sought.

Affected Public: Individuals or households

Estimated Annual Burden: 4,320 hours.

Estimated Average Burden per Respondent: 1 hour 12 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,600.

Dated: September 29, 2014.

By direction of the Secretary:

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23497 Filed 10–1–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0014]

Proposed Information Collection (Authorization and Certification of Entrance or Reentrance Into Rehabilitation and Certification of Status) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine to claimants training program attendance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 1, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0014'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Authorization and Certification of Entrance or Reentrance into Rehabilitation and Certification of Status, VA Form 28–1905.

OMB Control Number: 2900–0014.

Type of Review: Revision of a currently approved collection.

Abstract: VA case managers use VA Form 28–1905 to identify program participants and provide specific guidelines on the planned program to facilities providing education, training, or other rehabilitation services. Facility officials certify that the claimant has enrolled in the planned program and submit the form to VA. VA uses the data collected to ensure that claimants do not receive benefits for periods for which they did not participate in any rehabilitation, special restorative or specialized vocational training programs.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 90,000.

Dated: September 29, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23498 Filed 10–1–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0101]

Proposed Information Collection (Eligibility Verification Reports); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine and verify entitlement to income-based benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 1, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0101'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each

collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Eligibility Verification Reports (EVR).

a. Eligibility Verification Report Instructions, VA Form 21P–0510.

b. Old Law and Section 306 Eligibility Verification Report (Surviving Spouse), VA Form 21P–0512S–1.

c. Old Law and Section 306 Eligibility Verification Report (Veteran), VA Form 21P–0512V–1.

d. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Form 21P–0513–1.

e. DIC Parent's Eligibility Verification Report, VA Forms 21P–0514–1.

f. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Forms 21P–0516–1.

g. Improved Pension Eligibility Verification Report (Veteran With Children), VA 21P–0517–1.

h. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Forms 21P–0518–1.

i. Improved Pension Eligibility Verification Report (Child or Children), VA Forms 21P–0519C–1.

j. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Forms 21P–0519S–1.

OMB Control Number: 2900–0101.

Type of Review: Revision of a currently approved collection.

Abstract: VA uses Eligibility Verification Reports (EVR) forms to verify a claimant's continued entitlement to benefits. Claimants who applied for or receives Improved Pension or Parents' Dependency and Indemnity Compensation must promptly notify VA in writing of any changes in entitlement factors. EVRs are required annually by beneficiaries whose social security number (SSN) or whose spouse's SSN is not verified, or who has income other than Social Security. Recipients of Old Law and Section 306 Pension are no longer required to submit annual EVRs unless there is a change in their income.

Affected Public: Individuals or households.

Estimated Annual Burden: 25,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 50,000.

Dated: September 29, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23523 Filed 10–1–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0565]

Proposed Information Collection (State Application for Interment Allowance) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a State's eligibility for interment allowances.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 1, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0565'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: State Application for Interment Allowance Under 38 U.S.C., Chapter 23, VA Form 21–530a.

OMB Control Number: 2900–0565.

Type of Review: Extension of a previously approved collection.

Abstract: Data collected on VA Form 21–530a is used to determine a State's eligibility for burial allowance for eligible Veterans interred in a State Veteran's Cemetery.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 1,550 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One Time.

Estimated Number of Respondents: 3,100.

Dated: September 29, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23508 Filed 10–1–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0721]

Proposed Information Collection (Exam for Housebound Status or Permanent Need for Regular Aid and Attendance) Activity; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comment on information needed to determine eligibility for aid and attendance and/or housebound benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 1, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0721'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Exam for Housebound Status or Permanent Need for Regular Aid and Attendance, VA Form 21–2680.

OMB Control Number: 2900–0721.

Type of Review: Extension of a currently approved collection.

Abstract: VA will use VA Form 21–2680 to gather medical information that is necessary to determine beneficiaries or claimants receiving treatment from private doctors or physicians, eligibility for aid and attendance or housebound benefit.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 7,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 14,000.

Dated: September 29, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23520 Filed 10–1–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0110]

Proposed Information Collection (Application for Assumption Approval and/or Release From Personal Liability to the Government on a Home Loan) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to approve a claimant's request to be released from personal liability on a Government home loan.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 1, 2014.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0110'' in any correspondence. During the comment period, comments may be viewed online through at FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan, VA Form 26–6381.

OMB Control Number: 2900–0110.

Type of Review: Revision of a currently approved collection.

Abstract: Veteran-borrows complete VA Form 26–6381 to sell their home by assumption rather than requiring the purchaser to obtain their own financing to pay off the VA guaranteed home loan. In order for the Veteran-borrower to be

released from personal liability, the loan must be current and the purchaser must assume all of the veteran's liability to the Government and to the mortgage holder and meet the credit and income requirements.

Affected Public: Individuals or households, Business or other for profit.

Estimated Annual Burden: 42 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250.

Dated: September 29, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23502 Filed 10–1–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0768]

Proposed Information Collection (Joint Application for Comprehensive Assistance and Support Services for Family Caregivers) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify areas for improvement in clinical training programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 1, 2014.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Audrey Revere, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Audrey.revere@va.gov.* Please refer to ''OMB Control No. 2900–0768'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Audrey Revere at (202) 461–5694.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: VA Form 10–10CG, Application for Comprehensive Assistance for Family Caregivers Program.

OMB Control Number: 2900–0768.

Type of Review: Revision of a currently approved collection.

Abstract: The information collected will be used to determine if an Operation Enduring Freedom/Operation Iraqi Freedom/Operation New Dawn (OEF/OIF/OND) Veteran or active duty service member undergoing medical discharge qualifies for Caregiver Support Services and whether the individuals designated to serve as a primary or secondary family caregiver meet VA's criteria to serve in these roles.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Annual Responses: 5,000.

Dated: September 29, 2014.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2014–23521 Filed 10–1–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0368]

Proposed Information Collection (Monthly Statement of Wages Paid to Trainee) Activity; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comment on information needed to determine the correct rate of subsistence allowance and wages payable to a trainee in an approved on-the-job training or apprenticeship program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 1, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0368'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the

information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Monthly Statement of Wages Paid to Trainee (Chapter 31, Title 38, U.S.C.), VA Form 28–1917.

OMB Control Number: 2900–0368.

Type of Review: Extension of a currently approved collection.

Abstract: Employers providing on-job or apprenticeship training to veterans complete VA Form 28–1917 to report each veteran's wages during the preceding month. VA uses the information to determine whether the veteran is receiving the appropriate wage increase and correct rate of subsistence allowance.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,800 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 300.

Dated: September 29, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23506 Filed 10–1–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0171]

Proposed Information Collection (Application for Individualized Tutorial Assistance) Activity; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public comment in response to this notice. This notice solicits comments on the information needed to determine an applicant's eligibility for tutorial assistance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 1, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0171'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Individualized Tutorial Assistance, VA Form 22–1990t.

OMB Control Number: 2900–0171.

Type of Review: Revision of a currently approved collection.

Abstract: Students receiving VA educational assistance and need tutoring to overcome a deficiency in one or more course complete VA Form 22–1990t to apply for supplemental allowance for tutorial assistance. The student must provide the course or courses for which he or she requires tutoring, the number of hours and charges for each tutorial session and the name of the tutor. The tutor must certify that he or she provided tutoring at the specified charges and that he or she is not a close relative of the student. Certifying officials at the student's educational institution must certify that the tutoring was necessary for the student's pursuit of program; the tutor was qualified to conduct individualized tutorial assistance; and the charges for the tutoring did not exceed the customary charges for other students who receive the same tutorial assistance.

Affected Public: Individuals or households.

Estimated Annual Burden: 2000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1000.

Dated: September 29, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Clearance.

[FR Doc. 2014–23503 Filed 10–1–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0034]

Proposed Information Collection (Trainee Request for Leave—Chapter 31, Title 38, U.S.C.) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to evaluate a trainee's request for leave from Vocational Rehabilitation and Employment Program training.

DATES: Written comments and recommendations on the proposed

collection of information should be received on or before December 1, 2014.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0034'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 2632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Trainee Request for Leave—Chapter 31, Title 38, U. S. C., VA Form 28–1905h.

OMB Control Number: 2900–0034.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 28–1905h to request leave from their Vocational Rehabilitation and Employment Program training. The trainer or authorized school official must verify that the absence will or will not interfere with claimant's progress in the program. Claimants will continue to receive subsistence allowance and other program services during the leave period as if he or she were attending training. Disapproval of the request may result in loss of subsistence allowance for the leave period.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: September 29, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23499 Filed 10–1–14; 8:45 am]

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Part II

Department of Transportation

Office of the Secretary

49 CFR Part 26

Disadvantaged Business Enterprise: Program Implementation Modifications; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 26

[Docket No. OST–2012–0147]

RIN 2105–AE08

Disadvantaged Business Enterprise: Program Implementation Modifications

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation (DOT or Department) is amending its disadvantaged business enterprise (DBE) program regulations to improve program implementation in three major areas or categories. First, the rule revises the uniform certification application and reporting forms, creates a uniform personal net worth form, and collects data required by the Moving Ahead for Progress in the 21st Century Act (MAP–21), on the percentage of DBEs in each State. Second, the rule strengthens the certification-related program provisions, which includes adding a new provision authorizing summary suspensions under specified circumstances. Third, the rule modifies several other program provisions concerning such subjects as: Overall goal setting, good faith efforts, transit vehicle manufacturers, and counting for trucking companies. The revision also makes minor corrections to the rule.

DATES: This rule is effective November 3, 2014.

FOR FURTHER INFORMATION CONTACT: For questions related to this final rule or general information about the DBE rules/regulations, please contact Jo Anne Robinson, Senior Attorney, Office of General Law, Office of the General Counsel, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, Room W94–205, 202–366–6984, *JoAnne.Robinson@dot.gov.* DBE program points of contact for information related to other aspects of the DBE program, including certification appeals, programs to assist small and disadvantaged businesses, and information on the DBE program in specific operating administrations, can be found at *https://www.civilrights.dot.gov/disadvantaged-business-enterprise/about-dbe-program/dbe-program-points-contact.*

SUPPLEMENTARY INFORMATION: On September 6, 2012, the Department published in the **Federal Register** (77 FR 54952) a notice of proposed rulemaking (NPRM) to improve implementation of the DBE program. The DBE program is designed to enable small businesses owned and controlled by socially and economically disadvantaged individuals to compete for federally-funded contracts let by State and local transportation agencies the receive funds from DOT (i.e., recipients). The proposed rule called for a 60-day comment period, with comments to be received by November 5, 2012. Subsequently, the comment period was extended to December 24, 2012, through a notice published October 25, 2012 (77 FR 65164). The Department received approximately 300 comments from State departments of transportation, transit authorities, airports, DBEs, non-DBE firms, and representatives of various stakeholder organizations. Several commenters suggested that the Department hold a public meeting or listening session on the proposed changes before issuing a final rule. The Department responded by scheduling a public listening session for October 9, 2013, as announced in a September 18, 2013 notice (78 FR 57336), to receive additional public input on the costs and benefits of certain proposed changes, among other things. The public comment period also was reopened and extended from the date of publication until October 30, 2013. However, due to the lapse in government funding on October 1, 2013, the October 9, 2013 listening session was canceled and rescheduled to December 5, 2013 (78 FR 68016; November 13, 2013). The public comment period was reopened and extended to December 26, 2013.

The Department received an additional 50 written comments during the reopened comment periods and received in-person oral testimony from 23 individuals at the listening session, which was held in Washington, DC. Over 500 individuals registered to participate in the listening session via Web conferencing made available by the Department. A transcript of the comments received at the listening session and through the Web conferencing was placed in the NPRM docket before it closed on December 26, 2013.

Many of the written comments the Department received were extensive and covered numerous proposed changes, as well as commentary on existing regulations that are not the subject of a proposed amendment. Commenters also suggested changes beyond the scope of what was proposed by the Department in the NPRM. The Department has made changes in this final rule to some of its proposals in response to comments received during the entire comment period and at the listening session. With the exception of comments that are beyond the scope of the proposed rulemaking, or that failed to set forth any rationale or make suggestions, the Department discusses and responds to the comments on the major issues in the NPRM below.

Personal Net Worth (PNW) Form and Related Requirements

PNW Form

The Department explained in the NPRM the reasons it believed creating a uniform personal net worth (PNW) form would clear the confusion that may exist when recipients or other entities that perform the certification function (i.e., certifying agencies) use the U.S. Small Business Administration's (SBA) Personal Financial Statement Form 413 as part of their evaluation of the economic disadvantage of an applicant for certification pursuant to the rule. For example, the SBA Form 413 requires each partner or stockholder with 20% ownership or more of voting stock to complete the form. This is not required by 49 CFR part 26 and has caused some confusion. We proposed a revision to 49 CFR 26.67 and offered a sample PNW form and accompanying instruction sheet (see the proposed Appendix G of the September 6, 2012, proposed rule). The Department proposed that a standard form be used by all applicants to the program. Recipients were encouraged to post the new form electronically in a screen-fillable format on their Web site to allow users to complete and print the form online.

The proposed PNW form differed in several respects from the SBA's form that the Department mentioned in its June 2003 revision to Part 26 as an appropriate form for use by our recipients in determining whether an applicant meets the economic disadvantage requirements. Most notably, the form's length increased when more columns and rows were added to give applicants space to fill in their answers. We also proposed that persons completing the form submit backup documentation such as current bank, brokerage, and retirement account statements, mortgage notes, and instruments of conveyance and encouraged recipients when reasonable questions or concerns arise to look behind the statement and the submissions. A related proposal involved requiring applicants to submit documentation for items excluded from the PNW calculation, such as net equity in the primary residence and the value

of the disadvantaged owner's interest in the applicant firm.

The Department invited comment on whether the spouse of an applicant owner should have to file a PNW statement even if the spouse is not involved in the business in question. We noted that the SBA requires the submission of a separate form from a non-applicant spouse if the applicant is not legally separated. However, the SBA requirement is linked to the agency's consideration of a spouse's financial situation in determining a person's access to credit and capital; the existing DOT rule does not take this into account except in cases involving individual determinations of social and economic disadvantage (e.g., Appendix E situations). Currently, certifiers are able to request relevant information on a case-by-case basis. The NPRM proposed adding language to 49 CFR 26.67 to recognize the authority of certifiers to request information concerning the assets of the disadvantaged owner's spouse where needed to clarify whether assets have been transferred to the spouse.

On a related subject, the Department asked for comment on whether the treatment of assets held by married couples should extend to couples who are part of domestic partnerships or civil unions where these relationships are formally recognized under State law.

Over 60 comments addressed issues related to the PNW form, a significant majority of which supported the idea of a DOT-developed PNW form, although some did advocate for the continued use of SBA Form 413. One commenter suggested that the Department mandate that the new form be used without modification and that regulatory provisions be added to address violations by Unified Certification Program (UCP) certifying agencies that revise the form. There were many comments regarding the propriety of including in the PNW form assets that are excluded from the calculation used to determine economic disadvantage under the terms of the existing regulations at 49 CFR 26.67(a). While the majority of the commenters supported creating a DOT form, many thought the proposed form was too burdensome, requested too much documentation, is complicated, and should not be used for those reasons. Similarly, other commenters objected to the form's length, with some likening it to a Federal income tax filing. Some commenters requested information on the methodology used to estimate the paperwork burden associated with completing the proposed DOT PNW form.

Commenters that addressed the question of requiring the spouse of an applicant who is not involved in operating the business to submit a PNW form included business owners, UCP recipients, and advocacy group representatives. Ten commenters favored such a requirement, citing the need to review the applicant's claim that his or her PNW statement accurately reflects community property interests and as a check on the transfer of assets as a means to circumvent the eligibility requirements. Twenty commenters opposed requiring a spousal PNW statement, citing paperwork burden concerns and pointing out that the existing regulation enables certifiers to obtain this information on a ''case-by-case'' basis. Many commenters believed the requirement would be intrusive and unwarranted and would complicate an already burdensome application. A commenter stated that a blanket requirement would be counter-productive and dissuade eligible DBE owners from participating in the program. However, the majority of commenters favored the collection of a PNW statement from a spouse if he or she has some role in the business (e.g., stockholder, corporate director, partner, officer, of key person), has funded or provided financial guarantees, or has transferred or sold the business to the applicant.

All of the commenters that responded to the Department's question of extending the treatment of assets of married couples to domestic partnerships or civil unions recognized under State law supported such an extension as a matter of fairness and equal treatment. Among the commenters was a coalition of nine organizations led by the National Gay & Lesbian Chamber of Commerce, a national not-for-profit advocacy organization dedicated to expanding the economic opportunities and advancements of lesbian, gay, bisexual and transgender-owned businesses across the country.

DOT Response: The Department has decided to finalize its own PNW form largely as proposed, but with certain changes in response to comments that argued that the proposed form was unnecessarily burdensome. We believe a more prudent approach than the proposal to require all persons to submit backup documentation in every instance (including items excluded under the regulations) is for recipients to request this information for any assets or liabilities noted on the PNW form on a case-by-case basis rather than mandatory submission by all applicants. A one-size fits all approach, in which certifiers attempt to ''substantiate'' every line item regardless of magnitude or innocuousness is ill advised, administratively burdensome, and unduly restrictive. As argued by many commenters, that approach is unreasonable, onerous to applicants and sometimes excludes eligible firms. The final rule accomplishes two purposes: (1) Preserves recipient flexibility in seeking explanations for specific assets and liabilities and (2) shortens the form from 6 pages to a more manageable 3 pages, thereby streamlining the time it takes to complete it.

The DOT PNW form (attached as Appendix G) is the result of this balance of interests. As we proposed, this new form must be used without modification by certifiers and applicants whose economic disadvantaged status is relied upon for DBE certification. Section 26.67(a)(2)(i) and (ii) are amended to reflect this requirement. This is necessary to ensure that the requirements of this program are applied consistently by all certifying agencies. Language in the existing rule that requires requests for supporting documentation not be unduly lengthy, burdensome, or intrusive remains unchanged. We remind recipients that with regard to personal net worth, we intend for all information collection requests to serve a useful purpose that addresses a specific question regarding a value stated in the form and not in any way operate as authority to collect all possible documentation for each listed asset or a general requirement that business owners obtain appraisals of all assets. We urge recipients to exercise judgment and restraint when requesting reasonable supporting documentation. Personal net worth statements should not be requested for owners that are not claiming social and economic disadvantage. Nor should a personal net worth statement be requested from persons who are not listed as comprising 51% or more of the ownership percentage of the applicant firm.

The style and content of the form were carefully considered by the Department in this rulemaking. We are cognizant of concerns that too radical a departure from a form that certifiers are accustomed to using may cause some temporary confusion and corresponding administrative burdens. However, the Department believes that a standardized DOT PNW form accompanying the standard DBE Certification Application (also revised in this final rule) is a significant step in uniformity of practice. The DOT PNW form is modelled closely on SBA's Form 413, with differences tailored to DBE

program-specific needs, e.g., not to include the 49 CFR 26.67(a)(2)(iii) exclusions for ownership interest in the firm and equity in the primary residence on the front page.

The Department notes that the estimated burden hours contained in the proposed rule were based on the Department's experience in working with DBE and UCP agencies and our intent to produce a DBE-specific PNW form that includes the information typically needed to perform the certification function, but is not overly burdensome. Further, our proposed rule's estimate of 8 hours to complete the proposed PNW form is greater than the 1.5 hours SBA estimates for its form, which was designed to take into account the different purposes between the two programs and the fact that DBE applicants often need to supplement their form with supporting documentation. As discussed above, in response to comments, we have decided to lessen the requirements of the final form in today's final rule and believe that our original estimate, based on the form that will be now finalized, is reduced to 2 hours, slightly more than the SBA estimate for its form.

Another change we proposed and that we finalize today is that the instructions at the top of the form are customized for the DBE and ACDBE programs. Like SBA, we are requiring each owner to list on page 1 all assets (whether solely or jointly held) and specify liabilities. The categories of assets and liabilities we require mirror closely the SBA's categories but have minor differences. The Department's PNW form omits ''sources of income and contingent liabilities,'' which is contained on SBA's form. On page 2, section 4 of the DOT PNW form, owners must report any equity line of credit balances on real estate holdings, how the asset was acquired (e.g. purchase, inherit, divorce, gift), and the source of market valuation. Owners must also detail in section 6, the nature of the personal property or assets, such as automobiles and other vehicles, their household goods, and any accounts receivable, placing a value on such items in the appropriate column. We added a column to this section asking whether any of these assets are insured. We envision recipients (again on a case-by-case basis) may wish to request copies of any insurance valuation on these assets listed as insured and copies of notes or liens. Sections 7 (value of other business investments) and 9 (transfer of assets) are unique to the Department's PNW form and require applicants to list these activities as described.

We have decided not to require submission of the PNW form by the spouse of a disadvantaged owner who is not involved in the operations of the business. We agree that such a requirement is unduly burdensome for the applicant and the certifier, needlessly intrudes into the affairs of individuals who are not participants in the program, and is not necessary since certifiers may request this information as needed on a case-by-case basis, but not as a routine matter.

We also agree with the commenters urging us to extend the treatment of assets held by married couples to include domestic partnerships and civil unions that are legally recognized under State law. To this end, we have added a definition of spouse that includes same-sex or opposite-sex couples that are part of a domestic partnership or civil union recognized under State law.

Concurrent with this final rule and as requested by many commenters, the Departmental Office of Civil Rights is making the final form available for distribution in a screen-fillable portable document (PDF) format, which recipients may post on their Web sites and distribute to applicants as part of the DBE certification application process.

Economic Disadvantage 49 CFR 26.67

Since 2007, the Department has, through guidance, recommended that recipients take account of evidence that indicates assets held by an individual suggest he or she is not economically disadvantaged even though the personal net worth falls below the $1.32 million threshold that gives rise to a rebuttable presumption of economic disadvantage. The guidance reflects the Department's view that the purpose and intent of the economic disadvantage criteria is to more narrowly tailor the program to only reach those disadvantaged individuals adversely impacted by discrimination and the effects of discrimination and to accomplish the goal of remedying the effects of discrimination. The presumption is by regulation rebutted when the individual's personal net worth exceeds the $1.32 million cap. We proposed in the NPRM to codify the existing guidance to recognize that the presumption also may be rebutted if the individual's personal net worth falls below the cap, but the individual is, in fact, too wealthy to be considered disadvantaged by any reasonable measure. To illustrate the point, the guidance notes that under some circumstances a person with a very expensive house, a yacht, and extensive real or personal property holdings may be found not to be economically disadvantaged.

The Department also sought comment on whether a more bright-line approach would be preferable, such as whether someone with an adjusted gross income over one million dollars for two or three years on his or her Federal income tax return should not be presumed to be economically disadvantaged, regardless of their personal net worth (as defined by this program).

The Department received 42 comments on this issue. The difficulties potential applicants and recipients experience regarding economic disadvantage were expressed by many of the commenters and their views were not limited to whether the $1.32 million personal net worth cap is reasonable. Commenters mentioned several difficulties with both the current rule, the proposed codification of the ''accumulation of substantial wealth'' guidance, and the alternative bright-line approach tied to the adjusted gross income of the disadvantaged owners. Most commenters comprised of recipients, DBEs, and general contractors opposed amending the regulations to include the ability to accumulate substantial wealth as a basis for rebutting the presumption of economic disadvantage. The opponents viewed the proposal as vague, subjective, and likely to result in arbitrary decisions.

Many of the opponents of this approach believed that, if the Department were to finalize criteria for personal net worth beyond the existing calculation, a measure similar to the bright-line approach with varying adjusted gross income numbers over varying numbers of years would be preferable because it provides a more objective measure of whether an applicant is economically disadvantaged. Several commenters thought that the existing bright line of $1.32 million in personal net worth is sufficient. One commenter believes a bright-line approach helps certifiers because most are not accountants or tax experts. The Department also received comments specific to the application of the bright-line approach to S Corporations. Two commenters stated that using a bright-line approach was a false indicator for S Corporations in which the firm's income is passed through to DBE shareholders and thus is not a reflection of a shareholder's wealth. As defined by the U.S. Internal Revenue Service, S Corporations are corporations that elect to pass corporate income, losses, deductions, and credits through to their shareholders for federal tax purposes. One commenter did not

believe that a bright-line approach was appropriate for S Corporations and Limited Liability Corporations because owners of these entities recoup the profits on their personal returns in proportion to their ownership interests. The commenter went on to say that these entities distribute sufficient cash to their owners to enable them to pay income tax and this distribution does not increase the person's net worth.

DOT Response: As noted in the NPRM, the purpose of this proposed regulatory amendment is to give recipients a tool to exclude from the program someone who, in terms of overall assets is what a reasonable person would consider to be a wealthy individual, even if one with liabilities sufficient to bring his or her personal net worth under $1.32 million. The Department continues to believe that this kind of tool must be available to ensure that the program truly benefits those for whom it is intended. We have seen in certification appeals upheld by the Federal courts the reasoned application of this standard based on specific facts and circumstances in the entire administrative record that support the decision. *See SRS Technologies* v. *United States,* 894 F. Supp 8 (D.D.C. 1995); *SRS Technologies* v. *United States,* 843 F. Supp. 740 (D.D.C. 1994).

We acknowledge the benefits of a bright-line approach (whether it is the adjusted gross income approach proposed in the NPRM or the current bright-line personal net worth cap that exist in the regulations) and the potential for manipulation to fall within the bright-line. The Department strongly believes that recipients must be able to look beyond the individual's personal net worth bottom line and consider his or her overall economic situation in cases where the specific facts suggest the individual is obviously wealthy with resources indicating to a reasonable person that he or she is not economically disadvantaged. Thus, the final rule incorporates the guidance but does not go beyond it as proposed. We have not included as factors ''unlimited growth potential'' or ''has not experienced impediments to obtaining access to financing, markets, and resources.'' We believe that those additional criteria are unnecessary because the essence of what we intend is captured in the ''ability to accumulate substantial wealth'' standard as evidenced by the individual's income and the value of the various accumulated personal assets.

The Department, however, is sympathetic to the concerns raised by many commenters that the subjective standard could lead to arbitrary decisions by recipients. To address this concern, we have included in the final rule specific factors recipients may consider in evaluating the economic disadvantaged status of an applicant or owner in this circumstance. Those factors include (1) whether the average adjusted gross income of the owner over the most recent three-year period exceeds $350,000; (2) whether the income was unusual and not likely to occur in the future (e.g., inheritance); (3) whether the earnings were offset by losses (e.g., winnings and losses from gambling); (4) whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm; (5) other evidence that income is not indicative of lack of economic disadvantage, and (6) whether the fair market value of all assets exceed $6 million. Similar factors are used by the Small Business Administration in its application of the economic disadvantage criteria to individuals seeking to participate in its Small Disadvantaged Business and 8(a) programs, which has long recognized the ability to accumulate substantial wealth as a basis for a finding of no economic disadvantage. The Federal courts have upheld consideration of income levels tied to the top 1–2% of high income wage earners in the United States to evaluate the economic disadvantaged status of a small business owner as reasonably based, not the subject of arbitrary decision making. Id. SRS Technologies cases cited above. As noted by the SBA, ''. . . the average income for a small business owner is generally higher than the average income for the population at large and, therefore, what appears to be a high benchmark is merely reflective of the small business community.'' See preamble to the 2011 SBA Final Rule, 76 FR 8222–01.

We stress that we are not, with this change, requiring that a recipient consider these factors for every disadvantaged owner whose PNW would be below the current regulatory cap. Instead, today's final rule merely provides recipients who have a reasonable basis to believe that a particular owner should not be considered economically disadvantaged, despite their PNW, with the explicit authority to look at evidence beyond the PNW to determine whether that owner is truly economically disadvantaged. Further, the listed factors are simply intended to provide guidance to recipients about the kind of evidence they may look to in making this determination; it is not intended to be a checklist. An adjusted gross income below $350,000 may in appropriate circumstances indicate a lack of economic disadvantage. The determination should be based on the totality of the circumstances. Finally, as the final regulatory text clarifies, a recipient can only rebut the presumption of disadvantage under this standard through a proceeding that follows the same procedures as those used to remove a firm's eligibility under § 26.87. The Department believes that this procedural safeguard makes it unlikely that recipients will proceed in attempting to rebut the presumption of disadvantage in all but the most egregious cases.

Transfer of Assets 49 CFR 26.67

Under existing guidance contained in Appendix E, assets that individuals have transferred two years prior to filing their certification application may be counted when calculating their PNW. The Department proposed to codify the guidance by placing it in the rule text at § 26.67. The proposed rule essentially attributes to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to the submission of an application for certification or within two years of a participant's annual program review. This transfer rule would not apply to transfers to, or on behalf of, an immediate family member for that individual's education, medical expenses, or some other form of essential support or transfers to immediate family members that are consistent with the customary recognition of special occasions like birthdays, graduations, anniversaries, and retirements. We also proposed to expand the transfer rule to include transfers from the DBE owner to the applicant firm to ensure that such transfer are not used to enable the DBE owner to qualify for the program.

Most of the commenters, comprised largely of State departments of transportation and transit authorities, supported the proposed rule. Several commenters suggested there be no exception for transfers to a spouse and no exception where it can be demonstrated that the transfer was done to qualify for the program. Other commenters asked for clarification of certain terms (i.e., ''transfer'' or ''essential support'') or a narrowing of the exclusions. The few commenters that opposed the proposed rule provided little detail.

DOT Response: The Department is adopting the rule with a minor modification to the text. We see no reason to treat a spouse differently than other immediate family members regarding the exception. We agree with commenters that the exceptions would not apply if there is evidence indicating that a transfer to an immediate family member was in fact designed to enable the disadvantaged owner to evade the PNW threshold and thereby qualify for the program or remain in the program. The burden is on the applicant or the participant to demonstrate that the transfer is covered by the exception. In our experience with the Appendix E guidance, recipients have not had difficultly applying the transfer restrictions. However, we will through guidance provide clarification of terms used in the rule if needed based on specific facts and circumstances presented to the Department.

Certification Application Form

The Department proposed a revised nationwide uniform DBE Certification Application Form to replace the one in use since 2003. In the 2003 proposed rule (68 FR 35542) at that time, we urged commenters to think about what must be contained in the application and what might be reserved for an on-site review. The resulting application reflected the Department's goal of retaining the basic structure originating in the 1999 rule that was manageable and easy to follow for applicants who must fill out the form, while simultaneously being accessible and practical for the many recipients required to accept the form. We acknowledged a concern about keeping the application within reasonable limit, regarding its length and content, to prevent it from becoming too unwieldy and burdensome. We allowed recipients to supplement the form with written consent of the operating administration with a one to two page attachment containing the additional information collection requirements. We also required applicants to submit additional supporting documents not already required by the uniform application. We strongly suggested that the form be streamlined and that additional information should be sought during the on-site review rather than during the application process. As explained in the 2012 NPRM, the 2003 application was designed to be more streamlined and user-friendly, yet comprehensive enough to supply recipients with the necessary information to form their initial line of questioning prior to and during an on-site visit. In addition, the application was designed to further assist recipients in making determinations as to an applicant's eligibility for the DBE program.

In the Department's view, the above objectives still hold true, especially now that we provide for interstate certification. Pursuant to the January 28, 2011, final rule revision, provisions for interstate certification were added requiring applicants to provide to State B a complete copy of their application form, all supporting documentation, and other information submitted to State A or other States wherein the firm is certified. The application, therefore, must serve the needs of both sets of certifiers by providing a window into a firm's eligibility. As required by 49 CFR 26.73, eligibility determinations are to be based on present circumstances.

The Department's proposed application form as presented in the NPRM was longer in length than the existing form because of extra space added for applicants to write in their answer. We first noticed the need for more room for answers in the course of processing denial and decertification appeals where information was sometimes handwritten and overflowing the strict margins of the old form. However, despite our intention to make the form more amenable for applicants to have the option to fully explain their responses directly on the form, commenters raised concerns about the length of the form.

DOT Response: In response to comments about length and more specific technical comments about various aspects of the proposed form, we have shortened the entry spaces and removed several details that in our experience were not useful to include in the application but may have been more suitable questions to pose during an on-site review, as needed. For example, in the banking information space, we removed the need to insert the bank's phone number and address, but added a space identifying the names of individuals able to sign checks on the account. Similarly, in the bonding entry, we removed the need to specify the binder number, and the contact information of the bonding agent/broker. These items may be useful to a certifier, but we want to limit the amount of things an owner would have to ''look up'' to complete its application. The new form also removes obsolete material from the roadmap for applicants (page 1) and page 2 (e.g., relating to the long-expired Small Business Administration (SBA)—DOT Memorandum of Understanding). The final application form contains new items that were in the proposed form we believe are important. First, the dates of any site visits conducted by other UCPs (besides the home State) are important facts that will enable certifiers to determine if any other certifier has assessed the firm's eligibility as a DBE. If an entry here is checked, we encourage certifiers to obtain the site visit report and denial/decertification decisions from their UCP members or fellow certifiers in other States. Second, the new application offers ample space for a firm to provide a concise description of its primary activities, the products and/or services it provides, and the North American Industry Classification System (NAICS) codes it believes apply to the firm. This description will help certifiers prepare for their on-site visit but also assign NAICS codes and list the firm properly in the UCP online directory if certified.

One section of the old form that deserves more explanation as to why it was revised is the area where applicants are asked to specify by name, title, ethnicity, and gender the firm's management personnel who control several key areas, such as financial decisions, estimating and bidding, contract negotiation, field supervision, etc. In crafting the NPRM, we believed then, as we do now, that some of these entries could be reworded or broken down into sub-questions and we have incorporated these changes in the new form. For instance, ''sets policy for company direction/scope of operations,'' ''hire and fire field staff or crew,'' and ''attend bid opening and lettings,'' are new entries that examine more broadly the authority and responsibilities and authority roles of the majority owner vis-à-vis others in the firm. A more descriptive parenthetical is offered for ''office management,'' which now adds billing, accounts receivable/payable, etc. within the entry.

We have also added a feature we modelled after a few certifying agencies who supplemented their form with a chart for applicants to specify the frequency by which owners and key management personnel perform the relevant tasks. Applicants will now circle, in the appropriate rows, how often a person is involved in the functions identified as: ''always'', ''frequently'', ''seldom'', or ''never.'' These types of responses are very common across all certifiers who often ask this question during the on-site review. At least one commenter opposed this addition believing that assessing the amount of time owners and others devote implies that if they do not go into the field and supervise operations they are not in charge of the firm; and small business owners

frequently spend time arranging office-related matters (insurance, banking, accounting, etc.) to keep a business operational. We believe at a minimum, certifiers need to understand who does what, where, and for how long, when they assess owners' control of their firm. It is our intent that this simple breakdown of the frequency of the tasks identified will aid certifiers as they prepare for their on-site review of the owners, enabling them to ask targeted questions concerning the owners' control of their firm. The Department does not intend for certifiers to treat the new frequency chart as independently determinative of a firm's eligibility; rather, it is a tool to narrow the areas of further inquiry.

The application checklist, a vital component of the process to becoming a DBE, has also been simplified and divided into mandatory and optional items. Items from the original checklist have been left largely intact. However, to ease the paperwork burden, some are now no longer mandatory for all applicants (e.g., trust agreements held by any owner claiming disadvantaged status, year-end balance sheets and income statements for the past 3 years (or life of firm, if less than 3 years)). The Department intends for recipients to request and collect only the information necessary to determine eligibility. Smaller businesses with simple structures should not be subjected to unnecessarily burdensome data requests. We re-emphasize here that an owner's affidavit of certification attests to the fact that the information submitted is true and correct. Applicants should not be penalized for not having (or being unable to produce) items from the optional documentation list. Recipients should base eligibility decisions on the information they receive from the applicant.

To help simplify the data collection, we also clarified that the request for all applicants to submit tax returns should be limited to Federal not State returns. Two items identified in the NPRM were added to the checklist—the résumés of key personnel for the firm and any firm requests for current year federal tax return filing extensions. Résumés of key personnel are frequently requested of the applicant or provided voluntarily and should be readily available.

Various miscellaneous comments focused on the role of the Department in the certification process, with commenters suggesting that we host an on-line system for applications. Such a system would be difficult for the Department to manage and not in keeping with the delegation of the certification function to recipients and others through their UCPs. We will conspicuously post the uniform certification application, instructions, certification affidavit, and checklist on the Departmental Office of Civil Rights Web site, *https://www.civilrights.dot.gov*. A handful of commenters (including a member of Congress) spoke to the idea that newly established firms should only be required to complete a shorter more simplified form. In response, we note that newer firms may not have the level of documentation a larger firm will and can easily enter ''n/a'' (not applicable) in the entries provided. In the interest of uniformity, it is more beneficial to require all applicants to submit the standardized form. We remind certifiers that a firm lacking certain documentation or a history of providing a particular good or service is, under 49 CFR 26.73(b), not necessarily ineligible for certification.

Uniform Report of DBE Awards or Commitments and Payments, Appendix B

The Department proposed several changes to the Uniform Report of DBE Awards or Commitments and Payments (Uniform Report) designed to address concerns regarding the absence of data on women-owned DBE participation by race, confusing instructions, the differing needs of the various types of businesses/organizations participating in the program, and the collection of payments to DBEs on a ''real time'' basis. In response, we proposed to: (1) Create separate forms for general DBE reports and projects reports; (2) clarify the instructions; (3) collect information on minority women-owned DBEs; and (4) collect information on actual payments to DBEs on ongoing contracts performed during the reporting period (i.e., real time). The proposed forms in the NPRM kept the standard format but provided clearer instructions for completing some fields. We also proposed a surrogate for comparing DBE payments to the corresponding DBE commitments to respond to concerns raised by the Government Accountability Office (GAO) in its 2011 report on the adequacy of using DBE commitment data to determine whether a recipient is meeting its overall DBE goal. As we explained in the NPRM, the GAO criticized the existing form because it did not permit DOT to match recipients' DBE commitments in a given year with actual payments made to DBEs on the contracts to which the commitments pertained. The existing form provides information on the funds that are committed to DBEs in contracts let each year. However, the ''achievements'' block on the form refers to DBE payments that took place during the current year, including payments relating to contracts let in previous years, but could not include payments relating to contracts let in the current year that will not be made until future years.

Thirty-six (36) commenters addressed some aspect of the proposed changes to the existing Uniform Report. The majority of commenters agreed that the Uniform Report needs changes. Six commenters expressed general support for the proposed revisions and six expressed general opposition. Three commenters asked for simplified reporting requirements.

The collection of data on women-owned DBEs based on race/ethnicity drew comments from four general contractors associations, two of which suggested that the Department is creating additional requirements beyond what Congress intended in MAP–21. One commenter expressed the view that the breakout of DBE participation data by gender and race does nothing to improve the program and serves no purpose. Another commenter stated that prime contractors should not be responsible for gathering and reporting the racial classification of the women-owned DBE firms used on a project and that the data should not be used by the Department to set separate goals for women based on race.

The proposal to collect actual ''real time'' payment data on ongoing contracts drew a number of comments, many of which were favorable. Supporters viewed the information as a better snapshot of DBE participation and more closely connected to the overall DBE goal in some instances than is obtained through the existing collection of payment data on completed contracts. Proponents of this view include the Transit Vehicle Manufacturers (TVMs) who would like to submit data only on current payments, as well as some recipients that undertake mega projects (e.g., design/build) that may not show DBE activity at the outset. Some opponents thought the opposite, preferring to report payments on completed contracts to payments on ongoing contracts because, in their view, one can make the final comparison between the contract goal and actual payments to DBEs. One opponent was more concerned with the potential for the Department to incorrectly judge the recipients' overall performance, based on the payment data on ongoing contracts since the data would be affected by project schedules, project delays, change orders, and weather, all factors that impact the

schedule of DBE work and therefore payments to DBEs on a project. Another commenter expressed grave concerns about reporting on the current payment status of all active federally-assisted projects, citing the significant resources required and the challenge presented for those with electronic or paper processes. Two commenters suggested that the Department define ''ongoing contracts'' and one commenter asked for a definition of ''completed contract.''

To address concerns raised by the GAO about the lack of a match between DBE commitments in a given year and the actual payments to DBEs on the contracts pertaining to the commitments, the NPRM sought to provide options for connecting work committed to DBEs with actual payments to the committed DBEs that are credited toward the overall goal for a particular year. One option was to collect data in 3–5 year groupings and calculate the average amount of commitments and the average amount of payments, providing a reasonable approximation for comparing the extent to which commitments result in actual payments over a specified period of time. Alternatively, a proposed modification to the existing form that would track payments credited to contracts let over a 5-year period was described in the preamble in an attempt to reach the result the GAO recommended. However, we acknowledged that it would take several years to determine the extent to which commitments resulted in payments that enabled a recipient to meet the relevant overall DBE goal and that the collection and reporting of this data would involve greater resources by recipients that may yield information of limited use for program administration and oversight purposes. We invited the public to offer other ideas that would meet the accountability and program administration objectives of the Department.

Comments on this issue supported the idea but did not think the proposed options would produce current usable information. One commenter indicated that making programmatic changes 3 years after the data is collected seems irrelevant. A State department of transportation objected to the administrative burden of accumulating and reporting data over several years, diverting resources from the ''good work'' of the DBE program for this purpose. In fact, of the six commenters who registered disapproval, four did so because of the level of effort needed to maintain this data. Two of the opponents did not think the proposals sufficiently addressed the GAO's concerns. One commenter suggested that the Department establish a workgroup with external stakeholders to address the GAO's concern.

DOT Response: The Department has decided to make final the revisions to the Uniform Report and the accompanying instructions to be used by all recipients for general reporting, project reporting, and reporting by TVMs. The proposed ''general reporting'' and ''project reporting'' forms published in the NPRM were identical in format and content. The difference between the proposed forms lies in the instructions for completing one part of the form (Section A) when reporting on a project versus general reporting on DBE participation achieved during a specified period of time. Thus, the same form will be used by recipients for the different purposes as is done currently. Recipients will be expected to use the revised form to report on activity in Federal Fiscal Year 2015 (October 1, 2014–September 30, 2015). For example, the first report for FHWA and FTA recipients using the revised form will be due June 1, 2015 for the period beginning October 1, 2014 through March 31, 2015. The second report will be due December 1, 2015 for the period April 1, 2015 through September 30, 2015. Federal Aviation Administration (FAA) recipients will use the revised forms when they submit the annual report that is due December 1, 2015. Each operating administration will provide technical assistance and guidance to their recipients to ensure they understand what is required in each field for general reporting, project reporting, and reporting by TVMs. Collecting data on DBE participation by minority women will enable the Department to more fully respond to Congressional inquiries.

Actual payment data on ongoing contracts collected in Section C of the report applies to work on federally-assisted contracts performed during the reporting period. Payment data collected in Section D on completed contracts applies to contracts that the recipient has determined to be fully performed and thereby completed. No more work is required to be performed under the completed contract. In both instances, the data on payments to DBEs provides a ''snap shot'' of monies actually paid to DBEs, compared to dollars committed or awarded to DBEs but not yet paid, during the reporting period. The payment data on completed contracts allows recipients and the Department to determine success in meeting contract goals, while the payment data on ongoing contracts, over time, may provide some indication of how well yearly overall goals are being met.

The Department is sensitive to the concerns raised by commenters about the practicality of the proposals offered in response to the GAO report. The additional payment data for work performed during the reporting period on ongoing contracts may enable us to better assess the adequacy of the existing comparisons used to determine how well annual overall goals are being met through dollars expended with DBEs. Because most DOT-assisted contracts are multi-year contracts, payments made pursuant to those contracts will cross more than one fiscal year. However, in those cases where the yearly overall DBE goal does not change radically from year to year, the on-going payment data may provide a closer match than currently exists. For now, reliance on contractual commitments made during the fiscal year to determine the extent to which overall DBE goals for that fiscal year are met provides a reasonable proxy. The Department will continue to explore ways of addressing the GAO's concern that are likely to produce ''real time,'' useful information that does not strain existing recipient resources.

MAP–21 Data Reports

MAP–21 reauthorized the DBE program and included Congressional findings on the continued compelling need for the program. Section 1101(b)(4) of the statute included a long-standing but not yet implemented statutory requirement that States notify the Secretary in writing of the percentage of small business concerns that are controlled by: (1) Women, (2) socially and economically disadvantaged individuals (other than women), and (3) individuals who are women and are otherwise socially and economically disadvantaged individuals. The statute also directs the States to include the location of the aforementioned small businesses. The Department proposed to implement this requirement through the State Unified Certification Programs (UCP) that maintain statewide directories of all small businesses certified as DBEs. The information required by MAP–21 would be submitted to the Departmental Office of Civil Rights, the lead agency in the Office of the Secretary responsible for overseeing DOT implementation of the DBE program. For those firms that fall into more than one of the three categories, we proposed that the UCP agencies include a firm in the category applicable to the owner with the largest stake in the firm who is also involved in controlling the firm. We sought

comment on whether the Uniform Report of DBE Awards or Commitments and Payments should be the vehicle used to report the MAP–21 information.

Five commenters directly addressed this proposal. Only one of the commenters, a DBE contractor advocacy organization, opposed the collection and reporting of this information, stating that it serves no purpose. Four commenters support reporting the MAP–21 information separately from the Uniform Report and the advocacy organization suggested that the information should be submitted near the beginning of the fiscal year (October 15) to be consistent with other MAP–21 reporting requirements, as it would also be helpful for the purposes of those recipients involved in the program to have that information early. One commenter thought it would be more efficient to include it with the Uniform Report and that it could provide useful comparative data.

DOT Response: The Department has decided to require each State department of transportation, on behalf of the UCP, to submit the MAP–21 information to the Departmental Office of Civil Rights each year by January 1st, beginning in 2015. Most State departments of transportation are certifying agencies within the UCP; those who are not certifying agencies are, nonetheless, members of the UCP and share in the responsibility of making sure the UCP complies with DOT requirements. We agree that the information should not be reported on the Uniform Report; instead, it should be reported in a letter to the Director of the Departmental Office of Civil Rights. As indicated in the NPRM, to carry out this requirement, the UCPs would go through their statewide unified DBE directories and count the number of firms controlled, respectively, by: (1) White women, (2) minority or other men, and (3) minority women, and then convert the numbers to percentages, showing the calculations. The information reported would include the location of the firms in the State; it would not include ACDBEs in the numbers.

Certification Provisions

Size Standard 49 CFR 26.65

The Department proposed to adjust the statutory gross receipts cap from $22.41 million to $23.98 million for inflation and to clarify that the size standard that applies to a particular firm is the one appropriate to the firm's primary industry classification. To qualify as a small business, the average annual gross receipts of the firm (including its affiliates) over the previous three fiscal years shall not exceed this cap. Of the 23 comments received from State departments of transportation, UCPs, transit authorities, and representatives of DBEs and general contractors, most supported the increase in the size standard and a few suggested it be made effective immediately. Those that opposed the change (and some of the supporters) asked that the Department clarify what is meant by ''primary industry classification.''

DOT Response: The Department is amending the gross receipts cap for the financial assistance programs in 49 CFR Part 26 as proposed to $23.98 million to ensure that the opportunity of small businesses to participate in the DBE program remains unchanged after taking inflation into account. Under MAP–21 Section 1101(b)(2)(A) the Secretary of Transportation is instructed to make the adjustment annually for inflation. With this adjustment, if a firm's gross receipts, averaged over the firm's previous three fiscal years, exceed $23.98 million, then it exceeds the small business size limit for participation in the DBE program. We remind recipients that firms are not eligible as DBEs if they exceed the relevant NAICS code size limitation for the type(s) of work the firm seeks to perform in DOT-assisted contract, which may be lower than $23.98 million and may not constitute the primary business of the firm. The term ''primary industry classification'' is currently defined in the DBE program regulations at 49 CFR 26.5. To avoid any confusion on the application of SBA size standards to the various NAICS codes in which a firm may be certified, we have clarified the text of § 26.65(a) so that it is not limited to the firm's primary industry classification.

Ownership 49 CFR 26.69

The Department proposed several changes to the rules that govern ownership of a DBE to provide greater clarity and specificity to aid recipients in addressing situations in which non-disadvantaged individuals or firms are involved with the DBE and to address concerns raised by the decision of the court in *The Grove, Inc.* v. *U.S. Department of Transportation,* 578 F. Supp. 2d 37 (D.D.C., 2008).

This discussion focuses on the proposed changes most commented upon. Specifically, the NPRM proposed to explicitly prohibit a non-disadvantaged owner's prior or superior rights to profits (§ 26.69(c)(3)); proposed clarifications relating to funding streams and sources of capital used to acquire an ownership interest in the firm (§ 26.69(c)(1)); provided further specificity through examples on what constitutes capital contributions not commensurate with the DBE's value (including new examples of arrangements in which ownership fails to meet the ''real, substantial, and continuing'' requirements in the existing rule) (§ 26.69(c)(2)); and proposed to require that disadvantaged owners be entitled to at least 51% of dividends and other distributions (including liquidations) (§ 26.69(c)(4)). The NPRM further proposed to require that spousal renunciations be contemporaneous with applicable capital contributions or other transfers of marital or joint assets. Finally, the NPRM proposed to require close scrutiny of assets (including ownership interests in applicant firms) that disadvantaged owners obtain or other seller-nonbank financed transactions. This last proposed change would, among other specified conditions, generally require prevailing market (arm's length) terms with full recourse to the disadvantaged owners and/or to assets other than the ownership interest or an interest in the firm's profits.

The ownership proposals drew comments (33 in all) from State departments of transportation, transit authorities, UCPs, associations of minority business owners, other business owners, trade associations, counsel for DBE firms, a former DOT official, and a member of Congress. None expressed specific views on every proposal although several expressed either blanket approval or blanket reservations. Twenty commenters exclusively supported the proposals while thirteen expressed concerns with at least some of the changes.

A clear majority of recipients and UCPs supported most changes as providing clarity and ensuring program integrity. Private parties and trade associations, with some exceptions, expressed concern that the proposals overreached—by being too stringent, subjective, or burdensome to administer. More than a few commenters suggested that the proposals, if adopted, would discourage legitimate DBE participation, lead to inconsistent certification results across jurisdictions, or trap worthy but unsophisticated owners.

A transportation company opined that the ''substantial and complex revisions and additions'' to § 26.69 would require firm owners to attend ''a workshop to understand the criteria;'' would require recipients to employ staff with real estate, accounting, business management, and finance expertise; and would require the Department to

conduct nationwide training in a classroom setting. Some State transportation departments similarly objected that the careful scrutiny conditions would increase recipient time spent evaluating financial records and require hiring outside experts at added expense. A former Department official noted that this provision could create unwarranted barriers to program entry because in situations involving non-bank financing, ''the list of five items required in the proposed § 26.69(k) could be quite difficult to produce.''

Regarding the proposed change to the spousal renunciation rule, a transit authority proposed that DOT scrap the rule as ''unduly burdensome'' and allow spousal renunciations that occur at least two years after the use of marital assets to acquire an ownership interest in an applicant firm, provided that ''the transfer was not made solely for the purposes of obtaining DBE certification.'' DBE firm counsel and at least one State department of transportation objected to the renunciation rule as unduly burdensome, requiring excessive owner sophistication regarding certification standards, and discriminatory against DBEs in community property states. One trade association ''enthusiastically'' supported the ownership changes, however, particularly the new marital assets rule, and a transportation department urged that DOT provide new guidance regarding when a spouse's transfer is considered to be for the purpose of obtaining certification. Another transportation department feared that the renunciation rule would lead to fewer women owners qualifying for the DBE program; it requested that DOT generally ''explain more specifically what types of documents'' are sufficient to substantiate a firm's capitalization, including the source of funds. Finally, an association of women contractors criticized the renunciation proposal as a Catch-22 (renunciation indicates ''forethought to DBE creation'') that may be contrary to State law and current certification rules.

DOT Response: The Department carefully considered, evaluated, and weighed comments on both sides. We adopted some provisions as proposed (e.g., § 26.69(c)) and rejected others due to stakeholder concerns and possible unintended consequences.

We retain the existing marital asset provision of § 26.69(i) as currently written and do not adopt the proposed change to require spousal renunciation contemporaneous with the transfer. To adopt such a change might unnecessarily inhibit applicants from allocating marital assets in such a way so that a disadvantaged spouse can establish and fund their business using marital funds. The current rule has adequate protections in place to prevent a non-disadvantaged spouse from retaining ownership of marital assets used to acquire ownership of an applicant firm or of an ownership interest in the firm. As long as the non-disadvantaged spouse irrevocably renounces and transfers all rights in the assets/ownership interest in the manner sanctioned by State law in which either spouse or the firm is domiciled (as the rule currently provides), we see no reason to require a renunciation at the time of the transfer. Recipients should not view a firm's submission of renunciation contemporaneous with its application as precluding eligibility.

Regarding the careful scrutiny conditions in the proposed changes in § 26.69(k), we think it prudent not to finalize the revisions pending further study and review. Our proposal would have required careful scrutiny of situations where the disadvantaged owners of the firm obtain interests in a business or other assets from a seller-financed sale of the firm or in cases where a loan or proceeds from a non-financial institution was used by the owner to purchase the interest. The goal was to guard against seller-financed acquisitions (whether stock or assets) intended to disguise a non-disadvantaged owned business as a DBE firm. We agree with commenters that as written, the proposed language imposing mandatory conditions on transactions would be difficult for recipients to implement and has the potential of unfairly limiting the range of legitimate arrangements.

The Department adopts a revision we proposed to § 26.69(c)(3), which currently requires that a firm's disadvantaged owners must ''share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.'' This concept has proven difficult for certifiers to implement because of the tendency to interpret the phrase ''profits commensurate with their ownership interests'' to mean that the disadvantaged owners must be the highest paid persons in the firm, and to tie in § 26.71(i)'s mandate to ''consider remuneration'' differences between disadvantaged owners and other participants in the firm. We clarify here in this preamble and in the final rule for ownership purposes of § 26.69, the disadvantaged owners should be entitled to the profits and loss commensurate with their ownership interests; and any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits are grounds for denial of certification. This added provision is meant to be broad and is not absolute. There may be circumstances, particularly in franchise situations, where such an arrangement may be acceptable.

Control 49 CFR 26.71

Regarding control, the NPRM proposed clarifications to the rules concerning the involvement of non-disadvantaged individuals in the affairs of the firm by establishing more stringent requirements to ensure the disadvantaged owner(s) is in control of the company. To that end, the Department proposed to delineate some situations, circumstances, or arrangements (through examples) in which the involvement of a non-disadvantaged individual who is a former employer of the disadvantaged owner(s) may indicate a lack of control by the disadvantaged owner(s) and consequently may form the basis for denying certification. The examples included situations where the non-disadvantaged former employer controls the Board of Directors, contrary to existing requirements in 49 CFR 26.71(e); provides critical financial, bonding, or license support that enables the former employer to significantly influence business decisions; and loan arrangements or business relationships that cause dependence that prevents the disadvantaged owner from exercising independent judgment without great economic risk. In such cases, the recipient must determine that the relationship between the non-disadvantaged former employer and the disadvantaged individual or concern does not give the former employer ''actual control or the potential to control'' the DBE. The NPRM sought comment on whether there should be a presumption that non-disadvantaged owners who ostensibly transfer ownership and/or control to a disadvantaged person and remain involved with the firm in fact continue to control the firm.

Most of the commenters that addressed these proposed changes, many of whom were State departments of transportation, supported the change. Specific control-related comments included a UCP objecting to the proposed § 26.71(e) change as presuming misconduct and discouraging mentor-protégé relationships and spin-offs; and DBE counsel criticizing the proposed presumption as unnecessary and

antithetical to valid business and personal reasons for a non-disadvantaged person remaining associated with a DBE firm. A former DOT official likewise opined that the presumption could create unintentional barriers to entry ''for the very firms that are intended to benefit from the program.'' That official stated his view that when there is a legitimate business reason for the transfer, the firm should not be ineligible, even if DBE certification ''may have been part of the motivation.'' A member of Congress recommended that the Department hold ''additional stakeholder input sessions,'' particularly concerning paperwork and other burdens on DBE firms, applicants, and UCP/recipient staff.

DOT Response: As indicated in the NPRM, control is essential to program integrity designed to ensure that the benefits of the program reach the intended beneficiaries. The Department has decided to finalize the presumption of control by non-disadvantaged owners who remain involved in the company after a transfer. We emphasize that the presumption is rebuttable. Mentor-protégé relationships that conform to the guidance provided at 49 CFR 26.35 would rebut the presumption. Similarly, some of the explanations for continued involvement by the non-disadvantaged previous owner offered by one of the commenters may also rebut the presumption. For example, remaining with the firm to maintain contacts with previous customers, remaining temporarily to assist with the transfer, or maintaining a small ownership interest or minimal participation in the firm with no control of the company may rebut the presumption. Also, we have removed the phrase ''actual control or the potential to control'' to avoid muddying the concept; ''control'' is the issue.

We have removed the examples from the final rule because, upon further reflection, we believe they describe conduct that the rule itself prohibits or they are not helpful and may cause more confusion.

Prequalification 49 CFR 26.73

The Department proposed to revise the current provision at 49 CFR 26.73 to disconnect prequalification requirements (e.g., State or local conditions imposed on companies seeking to bid on certain categories of work) from certification requirements. As stated in the NPRM, the proposed change has the effect of not allowing prequalification to be used as a criterion for certification under any circumstances. This change would not prohibit the use of prequalification requirements that may exist for certain kinds of contracts. However, the prequalification status of a firm would not be relevant to an evaluation of whether the firm meets the requirements for certification as a DBE (e.g., size, social and economic disadvantaged status of the owners, ownership, and control). We noted that prequalification requirements may not exist for doing business in all modes of transportation (e.g., highways versus transit).

Only a few commenters addressed this proposed change, with most in favor because they agree it has no relevance to certification. The opponents of the change (mostly general contractors) read this proposal as eliminating the prequalification requirements imposed under State law (e.g., Pennsylvania) for DBEs while such requirements continue to exist for non-DBEs.

DOT Response: The Department has decided to finalize the rule as proposed. In doing so, we reiterate that this change has no effect on existing State laws that require all contractors and subcontractors performing work on contracts let by State departments of transportation or other government entities to be prequalified. Under the final rule, the certifying entities in a State UCP are not permitted to consider whether a firm seeking certification as a DBE is or is not prequalified. Certifiers are to analyze only the factors relevant to DBE eligibility (Subpart D of the rule) and not incorporate other recipient business requirements like prequalification status in decisions pertaining to the applicant's eligibility for certification in the DBE program, except as otherwise provided in the rules. Thus, a firm, once certified as a DBE, must satisfy any other applicable requirements imposed by the State on persons doing business with the State or in the State.

Certification Procedures 26.83

The Department proposed a variety of changes to the certification procedures that are set out at 49 CFR 26.83.

Additional Information Requirements

The Department proposed several changes to strengthen the process by which recipients evaluate the eligibility of a firm to be certified as a DBE and remain certified as a DBE. These proposed changes were intended to enable recipients to better assess the extent to which disadvantaged individuals own and control the kind of work the firm is certified to perform by: (1) Requiring key personnel be interviewed as part of the mandatory on-site review; (2) requiring the on-site visit be performed at the firm's principal place of business; (3) clarifying what should be covered in a review of the legal structure of a firm; (4) requiring the review of lease and loan agreements, bank signature cards, and payroll records; (5) obtaining information on the amount of work the firm has performed in the various NAICS codes in which the firm seeks certification; (6) clarifying that the applicant (the firm, its affiliates, and the disadvantaged owners) must provide income tax returns (Federal only) for the last three years; and (7) expressly authorizing the certifying agency to request clarification of information contained in the application at any time during the application process.

Most of the commenters (primarily State departments of transportation) supported the idea of interviewing key personnel, though several noted (as did the opponents) the increased administrative burden it may place on agency staff and suggested it be made an optional practice instead of an across-the-board requirement. Opponents questioned the need for such interviews and expressed concern about the focus on the involvement of the disadvantaged owner ''in the field,'' which is part of the rationale given by the Department for requiring key personnel interviews.

The proposal to request information on the amount of work performed in the NAICS code assignments requested by an applicant generated a fair number of comments opposed to the idea. The reasons for the opposition included concerns about the burden such a requirement would impose, the discriminatory impact it may have, the extent to which it contradicts or conflicts with the requirements of 49 CFR 26.73(b)(2), and the means to be used to determine the ''amount'' of work. Nearly all those who commented on this provision argued that the proposal to require three years of tax returns should only apply to Federal returns; State returns were viewed as unnecessary or not useful. Lastly, some commenters representing DBEs thought the proposal expressly authorizing certifiers to request clarification of information in the application at any time was too open-ended and needed to be limited.

DOT Response: The Department has decided to modify its proposed amendment to 49 CFR 26.83(c)(1) to leave it to the discretion of recipients whether key personnel identified by the recipient should be interviewed as part of the on-site review, to eliminate the proposal that applicants provide

information about the amount of work the firm has performed in the NAICS codes requested by the firm, and to only require Federal tax returns for the past 3 years. It is not the intent of the Department to create unnecessary administrative burdens for applicants or certifiers. We agree that the focus on the amount of work a DBE performs in a given NAICS code could be misinterpreted and applied in a way that adversely impacts newly formed start-up companies. In the DBE program, there is no requirement that a DBE perform a specific percentage of work for NAICS code assignment purposes. We are adopting the other proposed changes in § 26.83(c)(1).

By finalizing in the rule (§ 26.83(c)(4)) what is currently implied—that certifiers may seek clarification from applicants of any information contained in the application material—we are not conferring carte blanche authority to certifiers to request additional information beyond that which is currently allowed and subject to prior approval from the concerned operating administration pursuant to 49 CFR 26.83(c)(7). In the context of this rule change, the word ''clarification'' is to be given its commonly understood dictionary meaning—to be free of confusion or to make reasonably understandable. In other words, if the application material is unclear, confusing, or conflicting, the certifying agency may ask the applicant to clarify information already provided.

Certification Reviews

Under the current rule, recipients may conduct a certification review of a firm three years from the date of the most recent certification or sooner if appropriate in light of changed circumstances, a complaint, or other information affecting the firm's eligibility. The Department proposed to remove the reference to three years and instead clarify that a certification review should occur whenever there has been a change in the DBE's circumstances (i.e., a notice of change filed by the DBE), whenever a recipient becomes aware of information that raises a genuine question about the continued eligibility of a firm, or after a specified number of years set forth in the UCP agreement. The important point here is that a recipient may not, as a matter of course, require all DBEs reapply for certification every three years or go through a recertification process every three years that essentially requires a DBE resubmit a new application and all the accompanying documentation to remain certified. As the rule currently states, ''Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part through the procedures of § 26.87.''

DOT Response: Only a handful of commenters addressed this proposal. They uniformly supported it. The Department is finalizing the change as proposed.

Annual Affidavit of No Change

The Department proposed to require the submission every year of several additional documents to support the annual affidavit of no change DBEs currently file with recipients on the anniversary date of their certification. The additional documentation would include an updated statement of personal net worth, a record of any transfers of assets by the disadvantaged owner for less than fair market value to a family member within the preceding two years, all payments from the firm to the officers, owners, or directors, and the most recent Federal tax return.

Commenters were evenly divided among those who support the proposed change (mostly recipients) and those who oppose the change (mostly DBEs). Some commenters suggested the recipients be given the discretion to request the additional information if questions are raised about a DBE's status and others thought the Department should develop a uniform affidavit to be used by all.

DOT Response: The Department has decided to retain the existing rule and expressly provide for the submission of updated Federal tax information with the annual affidavit of no change, in addition to other documentation supporting the firm's size and gross receipts, which is currently required in 49 CFR 26.83(j) (''The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts.''). We are not adopting the proposal to annually require the submission of documentation beyond that which is currently required. We agree that the yearly submission of the additional documentation proposed in the NPRM would be unduly burdensome for DBEs and certifiers alike, is contrary to the basic premise underlying the ''no change affidavit,'' and begins to look like a reexamination of eligibility. Recipients have sufficient authority under current rules to request information from a DBE in individual cases if there is reason to believe the DBE may no longer be eligible to remain certified. See 49 CFR 26.83(h). With respect to the affidavit itself, the Department has developed a model affidavit for use by recipients that is posted on the Department's Web site and sees no need, at this time, to require its use instead of other forms suitable for this purpose developed by recipients.

Certification Denial 49 CFR 26.86

We proposed to clarify the effect of an appeal to the Department of a certification denial decision on the start of the waiting period that limits when an applicant may reapply for certification. The proposed rule adds language that states the appeal of a denial of certification does not extend (or toll the start of) the waiting period. In other words, the waiting period begins to run the day after the final decision at the State level, regardless of whether the firm appeals that decision to the Department.

The Department received comments from State departments of transportation, one State UCP, and representatives of general contractors and DBEs. The opponents of the proposal argued that the appeal process should be allowed to resolve issues concerning applicant eligibility before the applicant is allowed to reapply, so that certifiers are not wasting time or expending resources better spent elsewhere reviewing another application from the same applicant that may present the same issues that are before the Department for decision on appeal. In contrast, supporters of the proposed change simply agreed without further comment, presumably accepting the change as clarifying in nature.

DOT Response: The Department believes that an applicant who appeals the denial of its application for certification should not have to wait until the appeal has been decided before it can reapply at the end of the waiting period. In many instances, the deficiency that is the subject of the appeal may be cured reasonably quickly. There are, further, various cases in which the waiting period expires before the Department can render a decision. There should be no penalty or disincentive to appealing an adverse certifier decision; the Department intends that an appellant be no worse off than an applicant who does not appeal.

Decertification 49 CFR 26.87(f)

The Department proposed revisions to the grounds on which recipients may remove a DBE's certification to protect the integrity of the DBE program. The NPRM proposed to add three grounds for removal: (1) The certification

decision was clearly erroneous, (2) the DBE has failed to cooperate as required by 49 CFR 26.109, and (3) the DBE has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the program. The second and third grounds for removal are not new; the proposed revision simply places them among the existing list of five grounds for removal. As explained in the NPRM, the first ground revises the existing standard by replacing ''factually erroneous'' with ''clearly erroneous'' to address ''situations in which a mistake [of fact or law] was committed, in the absence of which the firm would not have been certified.'' The Department also sought comment on whether the suspension or debarment of a DBE should result in automatic decertification, should cause an evaluation of the DBE for decertification purposes, or should prompt some other action.

Recipients were universally supportive of the proposal to add additional grounds for removal of a DBE from the program. Representatives of DBEs and general contractors also registered support. An organization representing a caucus of women-owned businesses in Chicago and a DBE from Alabama opposed the changes. The focus of the opposition centered on the appropriateness of allowing removal for failing to timely file an annual no change affidavits or notice of change (i.e., failure to cooperate) or removal for not performing a commercially useful function (i.e., a pattern of conduct). One commenter suggested there be a higher standard of proof (i.e., willful disregard) applied to situations that involve not filing an annual no change affidavit in recognition of the fact that many DBEs have multiple certifications and may inadvertently fail to timely file required documents.

Most of the nineteen commenters on the question concerning the relationship between decertification and suspension and debarment proceedings were recipients (i.e., State Departments of Transportation, transit authorities, organizations that represent State DOTs) that overwhelmingly supported either the automatic decertification of a DBE that is suspended or debarred for any reason or the automatic decertification of a DBE that is suspended or debarred for conduct relevant or related to the DBE program. Five commenters opposed automatic decertification, suggesting instead that suspension and debarment should trigger an immediate evaluation of the DBE or should be a factor considered by the recipient based on the circumstances. One commenter suggested different treatment for suspensions and debarments: A debarment would result in permanent decertification, while a suspended DBE that is decertified could reapply at the end of the waiting period.

DOT Response: The Department has decided to make final the additional grounds for removal from the program. Two of the changes essentially represent a cross reference to existing regulations that permit removal for failure to cooperate and for a pattern of conduct indicating involvement in attempts to subvert the intent or requirements of the program. In the NPRM preamble discussion of this proposed change, we noted that the failure to cooperate covers such things as failing to send in affidavits of no change or notices of change and accompanying documents when needed. To be clear, the failure to cooperate is triggered when a DBE program participant fails to respond to a legitimate, reasonable request for information. If a DBE is notified by a recipient that it has not submitted the annual no change affidavit as required by the regulations, we would expect the DBE to respond promptly to such a request for information. Its failure to submit the requested information would be grounds for initiating a removal proceeding. Removal proceedings should not be initiated simply because the DBE failed to file the affidavit on its certification anniversary date, even though the information has been provided; nor should removal proceedings be continued once the DBE submits the requested information.

When a DBE is suspended or debarred based on a Federal, State, or local criminal indictment or conviction, or based on agency fact based proceedings, for conduct related to the DBE program (i.e., the DBE or its owners were indicted or convicted for perpetrating a fraud on the program related to the eligibility of the firm to be certified or fraud associated with the use of the DBE as a pass through or front company), the Department believes the DBE should be automatically decertified from the DBE program. Under those circumstances, recipients should not be required to initiate a separate § 26.87 decertification proceeding to remove a DBE. The suspension and debarment process affords the DBE an opportunity to be heard on the evidence of misconduct related to the DBE program that is relied upon to support the denial of bidding privileges. The same evidence would be relied upon to support decertification of the DBE, making further proceedings unnecessary. The Department believes that suspensions or debarments unrelated to the DBE program and consequently not bringing into question the DBE's size, disadvantage, ownership, control, or pattern of conduct to subvert the requirements of the program should not result in automatic removal from the DBE program. In those cases, recipients are advised to take appropriate action to note in the UCP directory the suspended or debarred status of the DBE. Because suspension or debarment actions are not permanent, we see no reason to make a decertification action permanent. Recipients must accept an application for certification from a previously suspended or debarred firm once the action is over.

Summary Suspension of Certification

The Department proposed to require the automatic or mandatory suspension of a DBE's certification without a hearing when a recipient has reason to believe that one or more of the disadvantaged owners needed to meet the ownership and control requirements is incarcerated or has died. As we indicted in the NPRM, a disadvantaged owner is considered necessary to the firm's eligibility if without that owner the firm would not meet the requirement of 51 percent ownership by disadvantaged individuals or the requirement that disadvantaged owners control the firm. Other material changes affecting the eligibility of the DBE to remain certified—like the sale of the firm to a new owner, the failure to notify the recipient of a material change in circumstances, or the failure to file the annual no change affidavit as currently required—may be the subject of a summary suspension (at the discretion of the recipient) but such action would not be automatic. During the period of suspension, the recipient must take steps to determine whether proceedings to remove the firm's certification should be initiated. While suspended, the DBE may not be counted toward contract goals on new contracts executed after the suspension but could continue to perform and be counted on contracts already underway. The recipient would have 30 days from receipt of information from the DBE challenging the suspension to determine whether to rescind the suspension or commence decertification proceedings through a UCP certifying entity.

Of the comments received from a combination of State departments of transportation, transit and airport authorities, and groups representing DBEs and prime contractors, almost all commenters supported this proposal as a much-needed program improvement. A group representing women-owned small businesses opposed the proposal,

arguing that suspending a DBE jeopardizes contracts that are a part of the assets of the company and consequently affects the valuation of the DBE. The group also suggested that there be some recognition of estate plans that provide for the child of the disadvantaged owner, who also may be a member of a presumptive group, to take over the firm. In such a case, the commenter posits that the DBE should remain certified if the heir submits an application within six months of the death of the disadvantaged owner. A State department of transportation did not agree that incarceration of the disadvantaged owner should result in an automatic suspension; instead, the State DOT believes the DBE should be removed from the program immediately.

There were several commenters that raised questions or suggested further clarification was needed in certain areas. For example, should the length of the period of incarceration or the reason for the incarceration matter in determining whether the DBE is suspended? Should suspended DBEs be entered in the Department's ineligibility database? A commenter also suggested that a failure to file the annual no change affidavit should not be grounds for summary suspension of a DBE, and recipients should be given more time to consider the DBE's response (60–90 days) before lifting the suspension or commencing decertification proceedings. Similarly, a State DOT suggested the automatic suspension include sale of a firm to a non-disadvantaged owner and when a DBE is under investigation by a recipient for dubious practices on its own contracts. A suspension under these circumstances would prevent the DBE from being listed on other contracts pending review or investigation. One commenter asked that we include a hold harmless provision if no decertification proceeding commenced or results.

DOT Response: The Department is adopting the proposed summary suspension provision. The fundamental premise underlying the summary suspension provision is that when a dramatic change in the operation of the DBE occurs that directly affects the status of the company as a DBE, swift action should be taken to address that situation to preserve the integrity of the program without compromising the procedural protections afforded DBEs to safeguard against action by recipients based on ill-founded or mistaken information. A recipient must have sufficient evidence of facts or circumstances that form the basis for its belief that a suspension of certification is in order. In cases where the recipient learns that a disadvantaged owner whose participation is essential to the continued certification of the firm as a DBE is no longer involved in the company due to incarceration or death, suspending the certification for a short period of time (30 days from the date the DBE receives notice of the suspension) strikes an appropriate balance between program integrity and fairness concerns. It does not matter how long the disadvantaged owner is incarcerated or the reason for the incarceration. What matters is that the company appears to be no longer owned and/or controlled by disadvantaged individuals as determined by the certifying authority. If a recipient determines after hearing from the DBE that the period of incarceration has ended or will end in 30 days, the recipient will lift the suspension (i.e., reinstate the DBE's certification) without initiating removal proceedings. Similarly, when an essential disadvantaged owner dies, his or her heirs who are also members of groups presumed to be disadvantaged are not presumed to be able to demonstrate sufficient ownership or control of the company. DBE certification is not transferable and does not pass to an owner's heirs. A short suspension of the DBE's certification until the heirs submit sufficient evidence to support a continuation of the firms' DBE status seems appropriate. The sooner the evidence of continued eligibility is provided by the DBE, the shorter the period of suspension if the certifying authority agrees that the firm remains eligible.

Under the current rules, disadvantaged owners have an affirmative obligation to notify recipients within 30 days of any material change in circumstances that would affect their continued eligibility to participate in the program and to annually affirm there have been no material changes. The Department does not agree that the authority to suspend one's certification should not be exercised when a DBE fails to abide by these requirements that are essential to ensuring that only eligible DBEs are certified as such and allowed to participate in the program.

Contrary to some of the comments, the summary suspension authority is not and should not be triggered by any violation of DBE program rules by a DBE. The Department also does not believe it appropriate or consistent with fundamental fairness to suspend a DBE while an investigation is pending since it would appear to prejudge the outcome of any investigation, assuming the reasons for the investigation are relevant to DBE program certification. Likewise, automatic decertification assumes that the likelihood or risk of error is small compared to the interest in protecting the integrity of the program such that there is little to be gained from hearing from the DBE to safeguard against inadvertent errors.

Lastly, suspensions are temporary actions taken until more information is obtained from the affected DBE. Consequently, suspensions should not be entered into the Department's ineligibility database, which is reserved for initial certification denial decisions and decertification actions taken by recipients after the DBE has been accorded a full hearing or an opportunity to be heard. We have taken steps to ensure that suspensions do not interfere with the ability of the DBE to continue working on a contract entered into before the suspension took effect. Thus, in this respect, a suspension is accorded the same treatment as the decertification of a DBE that occurs after a DBE has executed a contract. The same rationale applies. The Department is not persuaded that existing contracts that may be considered company assets will be placed in jeopardy if recipients are granted suspension authority.

Certification Appeals 49 CFR 26.89

The Department proposed clarifying amendments to the regulations governing appeals of certification decisions. The amendment would require appellants include in their letter of appeal a statement that specifies why the certification decision is erroneous, identifies the significant facts that were not considered by the certifying agency, or identifies the regulatory provision that was improperly applied. The amendment also would make clear that the Department's decision on appeal is based on the entire administrative record including the letter of appeal. The Department received a handful of comments on this proposed amendment; all of the comments supported the clarifications. The commenters included a State transportation department, a UCP certifying agency, and several individuals and organizations that represent DBEs and ACDBEs.

DOT Response: The Department is finalizing the substance of the proposal with a slight modification to the rule text. The entire administrative record includes the record compiled by the certifying agency from whom the appeal is taken, the letter of appeal from the appellant that contains the arguments for reversing the decision, and any supplemental material made a part of the record by the Department in its

discretion pursuant to 49 CFR 26.89(e). We hope that this minor, technical, clarifying change will dispel the notion that the Department is not to consider any information outside of the record created by the recipient, including the appellant's letter of appeal which necessarily comes after the recipient has created its record. The purpose of the appeal is to provide the appellant an opportunity to point out to the Department, through facts in the record and/or arguments in the appeal letter, why the certifying agency's decision is not ''supported by substantial evidence or inconsistent with the substantive or procedural provisions of [Part 26] concerning certification.'' It is not an opportunity to add new factual information that was not before the certifying agency. However, it is completely within the discretion of the Department whether to supplement the record with additional, relevant information made available to it by the appellant as provided in the existing rule.

Other Provisions

Program Objectives 49 CFR 26.1

In the NPRM, the Department proposed to add to the list of program objectives: Promoting the use of all types of DBEs . This minor technical modification is intended to make clear that application of the DBE program is not limited to construction contracting; the program covers the various kinds of work covered by federally funded contracts let by DOT recipients (e.g., professional services, supplies, etc.). All of the commenters that addressed this modification supported it.

DOT Response: For the reasons expressed in the NPRM, the Department made this change in the final rule.

Definitions

The Department proposed to add six new definitions to the rule for terms used in existing provisions. The words or phrases to be defined for purposes of the DBE program include ''assets;'' ''business, business concern, or business enterprise;'' ''contingent liability;'' ''days;'' ''liabilities;'' and ''transit vehicle manufacturer (TVM).'' We also proposed to modify the existing definition of ''immediate family member,'' ''primary industry classification,'' ''principal place of business,'' and the definitions of ''socially and economically disadvantaged individual,'' and ''Native American'' to be in sync with the U.S. Small Business Administration use of those two terms. We invited comment on whether the definition of TVM should include producers of vehicles to be used for public transportation purposes that receive post-production alterations or retrofitting (e.g., so-called ''cutaway'' vehicles, vans customized for service to people with disabilities). We also wanted to know if the scope of the existing definition of ''immediate family member'' is too broad. It currently includes grandchildren.

Most commenters supported all or some of the proposed definitions. We did not include an actual definition of ''non-disadvantaged individual'' and consequently have not added that term to 49 CFR 26.5. The definitions that generated some opposition or suggested changes were those for TVMs, immediate family member, and Native American. We focus only on these three terms for discussion. One of the few TVMs that provided comments expressed puzzlement over the Department's request for comment on whether producers of ''cutaway'' vehicles should be included in the TVM definition. According to the commenter, such companies, including its company that performs this type of manufacturing work, are indeed TVMs.

One commenter suggested we remove the word ''immediate'' from the term ''family member'' so that recipients may determine on a case-by-case basis whether an individual is considered an immediate family member. Another commenter thought grandparents and in-laws should be excluded, while a different commenter suggested we include ''sons and daughters-in-law.'' We also were asked to include ''live-in significant others'' to recognize domestic partnerships or civil unions. Regarding the definition of Native American, one commenter did not think it should be limited to recognized tribes.

DOT Response: The Department has modified the definition of TVM to include companies that cutaway, retrofit, or customize vehicles to be used for public transportation purposes. We do not think a change to the current approach of specifying in the rule who is considered an ''immediate family member'' in favor of leaving that determination to the certifying agency to decide case-by-case is the right policy choice. However, the Department has decided to modify the existing definition of ''immediate family member'' to keep it in sync with the existing definition of that term in Part 23. The revised definition includes brother-in-law, sister-in-law, or registered domestic partner and civil unions recognized under State law. In addition, we are including a definition for the term ''spouse'' that covers domestic partnerships and civil unions because we agree such relationships should be recognized in the DBE program.

We are finalizing the changes to the definition of Native American to incorporate the requirement that an American Indian be an enrolled member of a federally or State-recognized Indian tribe to make it consistent with the SBA definition. By statute, the term ''socially and economically disadvantaged individuals'' has the meaning given the term in section 8(d) of the Small Business Act and relevant subcontracting regulations issued pursuant to that Act. As explained in the SBA final rule:

> This final rule clarifies that an individual must be an enrolled member of a Federally or State recognized Indian Tribe in order to be considered an American Indian for purposes of the presumptive social disadvantage. This definition is consistent with the majority of other Federal programs defining the term Indian. An individual who is not an enrolled member of a Federally or State recognized Indian Tribe will not receive the presumption of social disadvantage as an American Indian. Nevertheless, if that individual has been identified as an American Indian, he or she may establish his or her individual social disadvantage by a preponderance of the evidence, and be admitted to the [DBE program] on that basis.

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Record Keeping Requirements 49 CFR 26.11

The Department proposed to establish record retention requirements for certification related records to ensure that recipients maintain documents needed to conduct certification reviews when necessary. All records documenting a firm's compliance with Part 26 must be retained in accord with the record retention requirements in the recipient's financial assistance agreement. Only six commenters expressed a view about this proposed change. Three of the commenters supported the change, two commenters requested clarification on the kind of records to be retained and for how long, and one commenter was neutral.

DOT Response: The regulatory text of the final rule identifies the minimal records that must be retained. They include the application package for all certified DBEs, affidavits of no change, notices of change, and on-site reviews. Recipients are encouraged to retain any other documents that may be relevant in the event of a compliance review. The uniform administrative rules for Federal grants and cooperative agreements and sub-awards to State, local and Indian tribal governments establish a three-year record retention requirement subject to exceptions set out at 49 CFR 18.42. We

have modified the final rule to include a three year retention period as a default for records other than the minimal records specified in the rule. The 3 year retention period applied to other records may be modified as provided by applicable Federal regulations or the grant agreement, whichever is longer.

DBE Program Requirement

The current rule regarding the application of the DBE program requirement to recipients of the various operating administrations of DOT has been the source of confusion for some. The Department proposed modifications to the rule to eliminate the confusion so that recipients will be clear about their obligation to establish a program and the corresponding obligation to establish an overall DBE participation goal. For FTA and FAA recipients, you must have a DBE program if in any Federal fiscal year the cumulative value of DBE program eligible contracts you will award will exceed $250,000 in Federal funds. In other words, when you add all the eligible Federally funded contracts you expect to award with Federal funds, the aggregate of total Federal funds to be expended will exceed $250,000. For FHWA, the proposed modification makes clear that under FHWA's financial assistance program, its direct, primary recipients must have an approved DBE program plan, and sub-recipients are expected to operate under the primary recipient's FHWA-approved DBE program plans.

Comments generally were supportive of the proposed changes, particularly those related to the FTA and FAA clarification of the $250,000 threshold requirement. Some of the State departments of transportation that commented requested further clarification of the FTA and FAA requirements and had questions about the proposed change applicable to FHWA recipients. For example, a State department of transportation asked that we identify or define what is an eligible contract and that we specify whether the $250,000 threshold applies to the total Federal dollars spent in contracts or the total Federal dollars received in a fiscal year. One commenter also asked that we reconsider requiring subrecipients of FHWA funds operate under the primary recipient's approved DBE program. Lastly, in situations where funding on a project is provided by more than one operating administration, a commenter suggested that the Department specify how that situation will be handled rather than direct recipients to consult the relevant DOT agencies for guidance.

DOT Response: The Department has finalized the proposed revisions. Where more than one operating administration is providing funding for a project or a contract, recipients should consult the OA providing the most funding for the project or contract and the OA, in turn, will coordinate with the DOT agencies involved to determine how to proceed. The final rule applies the $250,000 amount to the total Federal dollars to be expended by an FTA or FAA recipient in contracts funded in whole or in part with Federal assistance during the fiscal year. The rule expressly excludes from this calculation expenditures for transit vehicle purchases.

The following examples illustrate how this provision works:

A. The Hypothetical Area Transit System (HATS) receives $500,000 in FTA assistance. It spends $300,000 of this amount on bus purchases. It is spending $800,000 in local funds plus the remaining $200,000 in FTA funds to build an addition to its bus garage. Because HATS is spending less than $250,000 in FTA funds on contracting, exclusive of transit vehicle purchases, HATS is not responsible for having a DBE program.

B. The Your County Regional Airport receives $400,000 in FAA financial assistance. It uses $100,000 to purchase land and expends $300,000 of the FAA funds for contracts concerning a runway improvement project, as well as $500,000 in local funds. The airport must have a DBE program.

In the first example, even though HATS does not have to have a DBE program, it still must comply with Subpart A requirements of 49 CFR Part 26, such as nondiscrimination (§ 26.7) and assurances (§ 26.13). Compliance with these requirements, like compliance with Title VI of the Civil Rights Act is triggered by the receipt of any amount of DOT financial assistance. In both examples, eligible contracts are federally funded prime contracts.

The requirement that subrecipients of funds from FHWA operate under the direct recipients' approved DBE program is consistent with the way FHWA administers its financial assistance program regarding other Federal requirements imposed as a condition of receiving financial assistance. Through official guidance, the Department describes how subrecipients would administer contract goals on their contracts under the umbrella of the primary recipient's DBE program and overall goals. The continued validity of that guidance is not affected by this rule change.

Overall Goal Setting 49 CFR 26.45

The Department proposed several changes to the regulations governing overall goal setting. They include: (1) Codifying the elements of a bidders list that must be documented and supported when a bidders list is used to establish the base figure for DBE availability under Step One in the goal setting analysis; (2) disallowing the use of prequalification or plan holders lists (and other such lists) as a means of determining the base figure and consider extending the prohibition to bidders lists; (3) establishing a standard for when Step Two adjustments to the base figure should not be made; (4) specifying that in reviewing recipient's overall goal submission, the operating administrations are to be guided by the goal setting principles and best practices identified by the Department; (5) clarifying that project goals may reflect a percentage of the value of the entire project or a percentage of the Federal share; and (6) strengthening and streamlining the public participation requirements for goal setting.

The overwhelming majority of the comments received on the proposed changes to 49 CFR 26.45 were directed at the proposal to disallow use of prequalification lists and other such lists, including the bidders list, to establish the relative availability of DBEs (Step One of the goal setting analysis). Over 100 commenters, many of them general contractors who submitted form letters of objection, representatives of general contractors, and a few State departments of transportation, expressed the view that both prequalification lists and bidders lists are viable data sources for identifying qualified DBEs that are ready, willing, and able to perform on federally funded transportation contracts and that disallowing the use of these data sources would produce unrealistic overall goals that are not narrowly tailored as required by the United States Supreme Court to satisfy constitutional standards. Supporters of the proposal expressed the view that such lists underestimate availability and the true continuing effects of discrimination, represent the most conservative approach, and limit DBE opportunities by restricting consideration of all available DBEs. Other commenters, recognizing the limitations and the benefits of such lists, suggested that the lists should not be the exclusive source of data relied upon to capture the pool of available DBEs. One commenter supported retaining use of the prequalification list but supported getting rid of the bidders list which it

believed is worse than the prequalification list.

Commenters opposed to identifying the elements of a true bidders list (including successful and unsuccessful DBE and non-DBE prime contractors and subcontractors) suggested it might be difficult to compile such a list (i.e., capturing the unsuccessful firms—both DBEs and non-DBEs—bidding or submitting quotes on projects). Despite that concern, of the few commenters that addressed this proposal, most commenters supported it, which reflects the longstanding view of the Department, as set forth in the official tips on goal setting, of what a true bidders list should contain. With regard to the Step Two adjustment, nine of the twelve commenters opposed the change out of a belief that it effectively eliminates adjustments based on past participation by DBEs.

Commenters were almost evenly divided over the proposal to eliminate from the public participation process the requirement that the proposed overall goal be published in general circulation media for a 45-day comment period. Those objecting to this change were mostly representatives of general contractors and some State departments of transportation who viewed this process as more valuable than the stakeholder consultation process. There was universal support among the commenters for posting the proposed and final overall DBE goal on the recipient's Web site.

DOT Response: The Department is retaining the bidders list as one of the approaches recipients may use to establish the annual overall DBE participation goal. To be acceptable, the bidders list must conform to the elements that we finalize in this final rule by capturing the data that identifies the firms that bid or quote on federally assisted contracts. This includes successful and unsuccessful prime contractors, subcontractors, suppliers, truckers, other service providers, etc. that are interested in competing for contracts or work. Recipients that use this method must demonstrate and document to the satisfaction of the concerned operating administration the mechanism used to capture and compile the bidders list. If the bidders list does not capture all available firms that bid or quote, it must be used in combination with other data sources to ensure that it meets the standard in the existing regulations that applies to alternative methods used to derive a base figure for the DBE availability estimate (e.g., it is ''designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.'').

Prequalification lists and other such lists (i.e., plan holders lists) may be used but must be supplemented by other data sources on DBE availability not reflected in the lists. Looking only to prequalified contractors lists or similar lists to determine availability may serve only to perpetuate the effects of discrimination rather than attempt to remediate such discrimination. Thus, to summarize, a recipient may use a bidders list that meets the requirements of the final rule as the sole source in deriving its Step One base figure. However, if its bidders list does not meet these requirements, that list can still be used in determining the overall goal, but must be used in conjunction with other sources. Under no circumstances, though, may a recipient use a prequalification or plan holders list as the sole source used to derive the overall goal.

The purpose of the Step Two analysis in overall goal setting is to consider other available evidence of discrimination or its effects that may impact availability and based on that evidence consider making an appropriate adjustment to derive an overall goal that reflects the level of DBE participation one would expect in the absence of discrimination. The amendment made to the regulations through this final rule does not eliminate the discretion recipients have to make a Step Two adjustment based on past DBE participation or other evidence like econometric data that quantifies the ''but for discrimination'' effects on DBE availability. It recognizes, however, that where there are circumstances that indicate an adjustment is not necessary because, for example, the base figure and the level of past DBE participation are close or the DBE participation level reflects the effects of past or current noncompliance with DBE program regulations, then the evidence would not support making the adjustment. That said, it is incumbent upon recipients to explain to the operating administration why the adjustment is appropriate.

Instead of mandating publication of the proposed overall goal for a 45-day comment period, the Department decided to leave that decision to the discretion of the recipient. The proposal to eliminate this aspect of the existing public participation requirement was designed to reduce the administrative burden, expense, and delay associated with the publication requirement that is borne by recipients and often leads to few, if any, comments (i.e., not much value added). To the extent that some recipients view this as a worthwhile exercise, we see no reason to restrict their ability to allow additional comment through this process. In response to one commenter, we have reduced the comment period from 45 days to 30 days. Those recipients that choose to publish their overall goal for comment, in addition to engaging in the required consultation with stakeholders, must complete their process well before the deadline for submitting the overall goal documentation to the operating administration for review. As stated in the NPRM, the Department believes meaningful consultation with stakeholders is an important, cost-effective means of obtaining relevant information from the public concerning the methodology, data, and analysis that support the overall DBE goal. Once again, all public participation must be completed before the overall goal submission is provided to the operating administration. Failure to complete the publication process by those recipients that choose to conduct such a process should not delay review by the operating administration.

Transit Vehicle Manufacturers 49 CFR 26.49

The Department proposed to clear up confusion that exist about the goal setting and reporting requirements that apply to Transit Vehicle Manufacturers (TVMs). Specifically, the proposed rule clarifies how TVMs are to determine their annual overall DBE goals, when TVMs must report DBE awards and achievements data, and which portion of the DBE regulations apply to TVMs. Under the proposed rule, the goal setting methodology used by TVMs must include all federally funded domestic contracting opportunities made available to non-DBEs, not just those that apply to DBEs, and only the portion of the Federal share of a procurement that is available for contracts to outside firms is to be included. In other words, the DBE goal represents a percentage of the work the TVM will contract to others and not perform in house since work performed in-house is not truly a contracting opportunity available to the DBEs or non-DBEs. The Department sought comment on whether and how the Department should encourage more of the manufacturing process to be opened to DBEs and other small businesses.

With respect to reporting awards and achievements, the Department proposed to require TVMs continuously report their contracting activity in the Uniform Reports of DBE Awards/Commitments and Payments. In addition, the Department removed any doubt that the TVMs are responsible for implementing regulatory requirements similar to DOT

recipients. There is one notable exception: TVMs do not participate in the certification process (i.e., TVMs do not perform certification functions required of recipients and are not required to be a member of a UCP), and post-award requirements need not be followed in those years when a TVM is not awarded or performing as a transit vehicle provider. Lastly, the NPRM included a provision requiring recipients to document that only certified TVMs were allowed to bid and submit the name of the successful bidder consistent with the grant agreement.

Only 12 commenters addressed various aspects of the proposed changes to the TVM provisions. Three recipients supported the proposals as a whole, while others raised questions about the recommended changes and/or questioned existing requirements for which no change was proposed (e.g., suggested requiring the application of TVM provisions to all kinds of highway contracts or opposed the requirement that only certified TVMs are permitted to bid). One commenter rejected specific areas of the proposed changes. There was an additional comment submitted by the owner of a TVM who commented that it needed the services that the DBE program provides, rather than being forced into being a provider of those services.

DOT Response: The Department is confident that the proposed changes will strengthen compliance with TVM provisions and oversight of TVMs by exempting manufacturers from those regulations that are not applicable to this industry. Many of the proposed changes simply clarify the intent and practical application of existing TVM provisions. For example, the existing regulations require compliance, prior to bidding, to confirm a TVM's commitment to the DBE program before it is awarded a federally-assisted vehicle procurement. This is a long-standing requirement. The proposal introduces measures that help ensure pre-bid compliance (e.g., viewing the FTA certified TVM list and submitting the successful bidder to FTA after the award). The proposed changes also confirm that TVM regulatory requirements are nearly identical to that of transit recipients. For this reason, the FTA requires DBE goals from both transit recipients and TVMs as a condition of receiving Federal funds in the case of recipients and as a condition of being authorized to submit a bid or proposal on FTA-assisted transit vehicle procurements, in the case of TVMs.

In order to provide appropriate flexibility in implementing this provision, we must emphasize, to FTA recipients in particular, that overly prescriptive contract specifications on transit vehicle procurements—which, in effect, eliminate opportunities for DBEs in vehicle manufacturing—counter the intent of the DBE program and unduly restrict competition. Moreover, after request for proposals (RFPs) are released, FTA recipients should allow TVMs a reasonable timeframe to submit bids. To do otherwise limits the TVMs' ability to locate and utilize ready, willing, and able DBEs on FTA-assisted vehicle procurements. To lessen any administrative burdens, the FTA will continue posting a list of certified (i.e., compliant) TVMs to the FTA TVM Web page. Recipients may also request verification that a TVM has complied with the regulatory requirement by contacting the appropriate FTA Regional Civil Rights Officer—via email. FTA will respond to this request within 5 business days—via email.

Means Used To Meet Overall Goals 49 CFR 26.51

In the NPRM, we proposed to modify the rule that sets forth examples of what constitutes race-neutral DBE participation to remove as one of the examples ''selection of a DBE subcontractor by a prime contractor that did not consider the DBE's status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).'' We explained that it is impossible for recipients to determine if a prime contractor uses a strict low-bid system, and moreover, that such a system conflicts with the good faith efforts guidance in Appendix A that instructs prime contractors not to reject a DBE's quote over a non-DBE quote if the price difference is not unreasonable. Although not stated explicitly in the preamble, the proposed regulatory text made clear that the Department's proposal was simply to eliminate the statement ''*or even if there is a DBE goal,* wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts)'' from the regulatory text (emphasis added). Thus, as proposed, the Department only intended to remove this example for contracts that had a DBE goal.

Commenters, including general contractors and State departments of transportation, overwhelmingly opposed the proposed change for a variety of reasons. General contractors and organizations that represent contractors viewed this proposal as a major policy shift away from the use of race-neutral measures to obtain DBE participation, contrary to existing regulations and relevant court decisions. One commenter actually referred to the proposal as eliminating the use of race and gender means of obtaining DBE participation through the elimination of this one example. One commenter questioned the impact this change would have in those States where DBE contract goals are not established because the overall goal can be meet through race-neutral means alone. Another commenter mistakenly thought the proposed change would not allow DBE participation that exceeds a contract goal to be considered race-neutral participation as currently provided in Departmental guidance. Supporters of the proposal agreed with the explanation provided by the Department.

DOT Response: The Department believes that most of the opposition to this proposal stems from a misunderstanding of what the Department intended to change. The intent of the Department in the NPRM was to remove the proposed example only for contracts that had a DBE goal, not for contracts that were race-neutral. Thus, the Department did not propose nor is finalizing removing the other two examples of race-neutral DBE participation or to remove the third example for race-neutral contracts. The Department understands how the preamble to the NPRM could have led to this confusion, as it was not explicit. Certainly, had the Department proposed to remove, as an example of race-neutral participation, the ''selection of a DBE subcontractor by a prime contractor that did not consider the DBE's status in making the award'' in contracts that had no DBE goals, the Department would have, effectively, been eliminating the very concept of race-neutral participation.

Thus, instead of the drastic change that concerned many commenters, the revised final rule simply removes as an example of race-neutral DBE participation in contracts that have DBE goals the use of a strict low bid system to award subcontracts. The Department continues to believe that it is difficult for recipients to determine if a prime contractor uses a strict low bid system and that use of such a system when contract goals are set runs counter to the Department's good faith effort guidance in Appendix A.

However, this final rule does not mean DBE participation obtained in excess of a contract goal may never be considered race-neutral DBE participation. When DBE participation is obtained as a prime contractor

through customary competitive procurement procedures, is obtained as a subcontractor on a contract without a DBE goal, or is obtained in excess of a contract or project goal, the use of a DBE under those circumstances properly may be characterized as race-neutral DBE participation. This revision to our rule does not represent a policy shift from the existing requirement that recipients meet the maximum feasible portion of the overall goal through the use of race-neutral means of facilitating DBE participation. Indeed, if a recipient is able to meet its overall DBE participation goal without using race-conscious measures (i.e., setting contract goals), the recipient is obligated to do so under the existing regulations. The revision to 49 CFR 26.51(a) does not change that requirement.

Good Faith Efforts To Meet Contract Goals 49 CFR 26.53

Responsiveness vs. Responsibility

The NPRM proposed eliminating the ''responsiveness vs. responsibility'' distinction for when good faith efforts (GFE) documentation, which includes specific information about DBE participation, must be submitted on solicitations with DBE contract goals. The ''responsiveness'' approach requires all bidders or offerors to submit the DBE participation information and other GFE documentation required by 49 CFR 26.53(b)(2) at the time of bid submission. By contrast, the ''responsibility'' approach allows all bidders or offerors to submit the required information at some point before a commitment to perform the contract is made to a particular bidder or offeror (e.g., before contract award). The proposed change to the rule would have removed the current discretion recipients have to choose between the two approaches and require, with one exception, the submission of all information about DBEs that will participate on the contract and the evidence of GFE made to obtain DBE participation on the contract when the bid or offer is presented.

The NPRM also put forward an alternative approach that would allow a short period of time (e.g., 24 hours) after the bid submission deadline during which the apparent successful bidder or offeror would submit its GFE documentation. Under the alternative, the GFE documentation would have to relate to the pre-bid submission efforts; no post-bid efforts would be acceptable. The Department also asked for comment as to whether the one-day period should be extended to three days.

The exception to the across-the-board responsiveness approach or the alternative approach (all of which apply to sealed bid procurements) would be in a negotiated procurement, where in the initial submission the bidders or offerors may make a contractually binding commitment to meet the DBE contract goal and provide specific DBE information and GFE documentation before final selection for the contract is made. Negotiated procurement would include alternate procurement practices such as Design Build procurements in which it is not always possible to commit to specific DBEs at the time of bid submission or contract award.

The Department received many comments on this proposal. The majority of the responses opposing the revisions were submitted by prime contractors, prime contractor associations and some State departments of transportation. Over one hundred form letters of opposition from contractors were received. Those opposing the revision cited the nature of the construction industry and recipient procurement processes as a main reason for opposition. The majority of these comments concentrated on the administrative burden of providing GFE documentation that includes DBE commitments at the time of bid. Commenters stated that because of the nature of bidding on construction contracts, such as hectic timeframes, fixed deadlines, and electronic bidding forms, it was not possible to submit DBE commitments and other GFE documentation at the time of bid. Other reasons given for disapproval included the belief that the proposed rule would limit the use of DBEs on contracts, and it would be difficult for DBEs to negotiate with multiple bidders as opposed to only the identified lowest bidder. In addition, some commenters believed it would not be possible to implement the ''responsiveness'' approach on ''design build projects'' because the design and scope of work for the project is not known at the time of bid.

The Department received comments in favor of the proposal, primarily from minority and women advocacy organizations, regional transit authorities, and some State departments of transportation that already required DBE documentation as a matter of responsiveness. Those in support of the revision primarily stated that the current practice of allowing each recipient to decide whether DBE information should be collected as a matter of responsiveness or responsibility has led to abuses of the DBE program, such as facilitating ''bid shopping'' practices. A member of Congress supported this proposal stating that the current practice of allowing each recipient to decide whether DBE information should be collected as a matter of responsiveness or responsibility has led to abuses of the DBE program, without more specifics.

There were alternatives suggested by some organizations. Most of the suggestions can be grouped into three general categories: (1) Leave the ''responsiveness/responsibility'' distinction as is; (2) allow a short time frame for GFE documentation that includes DBE information to be submitted (1–3 days); and (3) allow a longer time frame for that information to be submitted (3–14 days). Many who opposed eliminating the ''responsive/responsibility'' distinction had less opposition if good faith efforts documentation could be submitted by the apparent low bidder sometime after bid submission. Most opponents expressed a need for a longer timeframe to review the quotes. In addition, general contractor organizations overwhelmingly stated that the good faith efforts documentation should only be submitted by the apparent successful bidder. There were additional comments that opposed the proposal, but they did not offer any suggestions for a different timeframe.

After the Department reopened the comment period in September 2013 and convened a listening session on December 5, 2013, to hear directly from stakeholders about the specific costs and benefits of this proposed regulatory change, general contractors overwhelmingly continued to express strong opposition to the proposal. According to the contractors, the problems presented by the proposal include, among others: (1) A failure of the Department to understand the complexities and challenges of the bidding process; (2) increased burdens placed on the limited resources available to DBEs to develop multiple quotes and engage in time-consuming negotiations before bids are due; (3) adverse impact on the willingness of general contractors to consider new, unfamiliar DBEs because of limited vetting time; (4) increased risk to prime contractors from incomplete or inaccurate DBE quotes likely to result in less DBE participation; (5) a reduction in, or elimination of, second tier subcontracting opportunities for DBEs; and (6) a deterrent to the use of DBEs in creative methods due to concerns about disclosure of confidential, proprietary information. Moreover, the American Road & Transportation Builders Association (ARTBA) and the

Associated General Contractors of America (AGC) challenged the claim of ''bid shopping'' as the basis for the proposed change, demanding a full explanation of the problem (if it exists) and the data relied upon to justify the proposal.

Based on a survey of 300 ARTBA members, 42% of the contractors indicated they would bid on less Federal-aid work if this (and other) proposed change is made permanent; that they would have to increase bid prices to cover additional costs ($25,000–$100,000 per bid); that they would have to add staff; and that the estimated cost of complying annually across the industry is in the range of $2.5 million–$11 billion. Forty-three percent (43%) of the members indicated that DBE plans (i.e., DBE commitments) currently are required by their State departments of transportation at the time of bid; and 37% currently submit good faith efforts documentation with their bid. The AGC acknowledged that some States currently require listing DBEs at the time of bid, but it asserts that those contacted universally responded that the bidding process is costly, burdensome, and results in lower DBE utilization.

The few State departments of transportation that submitted written comments during the reopened comment period supported allowing recipients the flexibility to permit submission of good faith efforts documentation at least 7–10 days after bids are due. Those with electronic bidding systems cited costs associated with modifying those systems to conform to changes in the rules as one more burden straining already limited resources. One State department of transportation supported the proposed change requiring good faith efforts documentation at bid opening.

A few DBEs submitted a form expressing support for the requirement that good faith efforts documentation be submitted with the bid, while others saw the change as creating an unnecessary burden that would tax resources and may result in shutting out DBEs. Before adopting an across-the-board approach, one commenter urged the Department to look carefully at other States that follow the ''responsiveness'' approach to assess whether it creates opportunities or closes doors. Given prime contractor opposition, the commenter thought there should be more of a factual predicate to support this proposed change.

DOT Response: For years the Department has been concerned about claims of ''bid shopping'' engaged in by some prime contractors to the detriment of DBE and non-DBE subcontractors, suppliers, truckers, etc. and the adverse impact it has on the principle of fair competition. The meaning and practice of bid shopping is well understood within the construction industry and among public contracting entities. It occurs when a general contractor discloses the bid price of one subcontractor to a competing subcontractor in an attempt to obtain a lower bid than the one on which the general contractor based its bid to the owner. Variations include ''reverse auctions'' (where the subcontractors compete for the job by lowering prices) and ''bid peddling'' (subcontractors offering to reduce their bid to induce the contractors to substitute the subcontractor after award).

In 1992, when the Department proposed a similar change in the DBE program regulations, it believed then, as it does now, that requiring the submission of good faith efforts documentation that includes DBE information at the time bids are due (as a matter of responsiveness) is a reasonable means of reducing the bid shopping problem. Contrary to the current claims made by general contractors, the Department's interest in revisiting this issue represents neither a ''startling'' change in direction for the DBE program nor a lack of understanding of the procurement process for transportation construction projects. At the same time, the Department acknowledged later in 1997 and 1999 when we finalized that proposed rulemaking, as it does now, that the responsiveness approach may be more difficult administratively for prime contractors and recipients, even though that approach was, and is, being used in some places.

One of the hallmarks of the DBE program is the flexibility afforded recipients to tailor implementation of some aspects of the program to respond to local conditions or circumstances. Indeed, the DBE program regulations cite among the objectives, the desire ''to provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.'' 49 CFR 26.1(g). Flexibility is recognized in many ways: For recipients, overall and contract goals are set based on local conditions, taking into account circumstances specific to a particular recipient or a particular contract; and for prime contractors, they cannot be penalized or denied a contract for failing to meet the goal, as long as documented good faith efforts are made. At what point in the procurement process the good faith efforts documentation must be submitted is yet another example of the flexibility that the Department should not undo without more information.

To the extent that bid shopping exists, it works to the detriment of all subcontractors, DBEs and non-DBEs alike, and drives up the cost of projects to the taxpaying public. However, absent sufficient data regarding the impact of each approach on deterring bid shopping and its effects or data on the costs/benefits of each approach when implemented consistent with the rule, as well as the potential burdens argued by those opposed to the change, the Department is not prepared, at this time, to finalize the proposal to adopt an across-the-board approach. Before taking that step, we think it prudent to examine closely the ''responsiveness'' approach used by many recipients to determine its impact on mitigating bid shopping and on providing greater or lesser opportunities for DBE participation. We intend to undertake such a review which may lead to proposed regulatory action in the future.

While we are retaining the discretion of recipients to choose between a responsiveness or responsibility approach, we think there should be some limit to how long after bid opening bidders or offerors are allowed to submit GFE documentation that includes specific DBE information to reduce the opportunity to bid shop where it exists. This would have the effect of reducing the burden on prime contractors and recipients who use a responsibility approach from the burden allegedly caused by the proposal, while at the same time minimizing opportunities for bid shopping by restricting the amount of time truly needed to gather the necessary information. From the comments, the time period permitted by recipients that use the responsibility approach can run the gamut from 3 to 30 days. These comments present timelines similar to those found in a review the Department recently conducted of the DBE Program Plans for all 50 states, Puerto Rico and the District of Columbia.[1] The results of this analysis are available in the docket for this rulemaking.[2] This analysis shows that: (1) 30 of the State departments of transportation report that they use the responsiveness approach, although the Department notes that some variations on the responsiveness approach—a combination of responsiveness and responsibility—may actually be used by

[1] For purposes of this discussion, Puerto Rico and the District of Columbia are considered ''States,'' thus the totals add up to 52.

[2] See DOT Docket ID Number OST–2012–0147.

some of these recipients; (2) 20 State departments of transportation used the responsibility approach; and (3) two State departments of transportation (Puerto Rico and Florida) have completely race-neutral programs and thus do not set DBE contract goals. Of the 20 responsibility States, 17 States have a set period of time bidders or offerors are given to submit the required information, which ranges from 3 to 15 days, while three States have no set time for all contracts.[3] The results of this review are generally consistent with the survey conducted by ARTBA indicating that 43% of the 300 members responding stated that their State departments of transportation required submission of DBE utilization plans with the bid. We note that the term ''DBE utilization plan'' is not used anywhere in the DBE program regulations.

We think it reasonable ultimately to limit the time to a maximum of 5 calendar days to protect program beneficiaries and overall program integrity.[4] The Department believes 5 calendar days is reasonable because it is more than or equal to the time permitted by five of the responsibility states and, by definition, all of the responsiveness states. Moreover, many of the DOT recipients that commented on establishing a time limit recommended between one (1) to 7 days. Allowing a longer time frame, such as between 7 and 14 days, is too long; it increases opportunities for bid shopping to occur. However, in the final rule we have provided some time for recipients that use this revised responsibility approach to transition to the shorter time frame by January 1, 2017. The transition period is intended to provide time to put in place any necessary system modifications. Until then, recipients will be permitted up to 7 calendar days to require the submission of DBE documentation after bid opening when using a responsibility approach. The Department believes this will allow for a smoother transition to the new approach, while seemingly without encountering the administrative difficulties and added costs pointed to by some of the commenters opposed to the proposed change.

Based on the comments, there is some confusion about how the document requirements of § 26.53(b) apply to design-build contracts. It bears repeating what the Department said in 1999 on this subject, because it remains the case today:

> On design-build contracts, the normal process for setting contract goals does not fit the contract award process well. At the time of the award of the master contract, neither the recipient nor the master contractor knows in detail what the project will look like or exactly what contracting opportunities there will be, let alone the identity of DBEs who may subsequently be involved. In these situations, the recipient may alter the normal process, setting a project goal to which the master contractor commits. Later, when the master contractor is letting subcontracts, it will set contract goals as appropriate, standing in the shoes of the recipient. The recipient will exercise oversight of this process.

(64 FR 5115). The proposed change would not have applied to design-build contracts.

NAICS Codes

The Department proposed changes to the information to be included with bids or offers by requiring the bidders or offerors to provide the recipient with information showing that each DBE signed up by the bidder or offeror is certified in the NAICS code(s) for the kind of work the DBE will be performing. This proposed change was intended to help bidders or offerors identify firms that can qualify for DBE credit in the work area involved in the contract. This information would be submitted with the bidder's or offeror's DBE participation data.

The Department received 26 comments regarding the NAICS codes, 15 against the proposal and nine in favor of it. The comments submitted included State departments of transportation, prime contractors and contractor associations. The opponents of this proposal included mostly prime contractors and contractor associations, and a few State departments of transportation. The opponents' comments focused on a concern that the legal risk associated with including a DBE who could not perform a commercially useful function would fall on the prime contractor, meaning that the prime contractor could be the subject of investigations and charges brought by the DOT Inspector General and others, when it is the certifying agencies that should bear this responsibility. Other comments indicated that adding NAICS codes would not add any value to the process. The proponents of the proposal included advocacy groups and some State departments of transportation. Proponents believe that the NAICS code requirement will add clarification to the process and ensure that the recipient can complete the work.

DOT Response: Under existing regulations, DBEs must be certified in the type of work the firm can perform as described by the most specific available NAICS code for that type of work. Certifiers (i.e., recipients or other agencies that perform the certification function) also may apply a descriptor from a classification scheme of equivalent detail and specificity that reflects the goods and services provided by the DBE (49 CFR 26.71(n)). It is the responsibility of the DBE to provide the certifier with the information needed to make an appropriate NAICS code assignment. In the new certification application form, firms are asked to describe their primary activities and the product(s) or services(s) they provide and to list applicable NAICS codes they seek. If the firm enters into new areas of work since it was first certified, it is the firm's responsibility to provide the certifier the evidence of how they qualify for the new NACIS codes. It is then incumbent upon the certifying agency to determine that the NAICS code to be assigned adequately describes the kind of work the disadvantaged owners have demonstrated they can control and it is the responsibility of the recipient of DOT funds to determine that the DBE's participation on a particular contract can be counted because the DBE is certified to perform the kind of work to be performed on that contract.

The Department has decided to make final this proposed rule change. In doing so, the Department does not intend to shift responsibility for the accuracy of NAICS code assignments from the certifier to the contractor. When a DBE submits a bid to a recipient as a prime contractor or a quote to a general contractor as a subcontractor, it is the responsibility of the DBE to ensure that the bid or quote shows that the NAICS code in which the DBE is certified corresponds to the work to be performed by the DBE on that contract. It would be in the best interest of the contractor to also have this information when it is considering DBEs interested in competing for contract opportunities where a contract goal has been set. This enables the contractor to make a reasonable determination whether it has made good faith efforts to meet the goal through the DBEs listed. Ultimately, the recipient is responsible for ensuring the DBE is certified to do the kind of work covered by the contract before DBE participation can be counted. Including this information in the bid documents should assist all parties concerned in

[3] Under 49 CFR 26.53(c), all GFE documentation must be submitted before committing to the performance of the contract by the bidder or offeror (i.e., before contract award).

[4] Due to the definition of ''days'' adopted in this final rule, bidders or offerors will have 5 calendar days (i.e., not business days) to submit the necessary information. Thus, if a bid is submitted on Thursday, the apparent low bidder would have until Tuesday to submit the information.

complying with DBE program requirements. Thus, it is the responsibility of the certifier to ensure that DBEs are certified only in the appropriate NAICS codes; it is the responsibility of the DBE to provide that NAICS code to the prime while the prime is putting together a bid; and it is the responsibility of the prime to provide those codes to the recipient when providing the other DBE information. It is not the responsibility of the prime to vouch for the accuracy of that certification.

Replacement of a DBE

The NPRM proposed that in the event that it is necessary to replace a DBE listed on a contract, a contractor must document the GFE taken to obtain a replacement and may be required to take specific steps to demonstrate GFE. The specific steps would include: (1) A statement of efforts made to negotiate with DBEs for specific work or supplies, including the names, address, telephone numbers, and emails of those DBEs that were contacted; (2) the time and date each DBE was contacted; (3) a description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed or the materials supplied; and (4) an explanation of why an agreement between the prime contractor and a DBE was not reached. The prime contractor would have to submit this information within 7 days of the recipient's agreement to permit the original DBE to be replaced, and the recipient must provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated. Failure to comply with the GFE requirements in the rule would constitute a material breach of contract, subject to termination and other remedies provided in the contract.

Twenty-eight commenters opposed this modification to the rules. They included prime contractors, State departments of transportation, and contractor associations. Essentially, the opponents were of the view that prime contractors should not be responsible for looking beyond the original commitment for DBE replacements. Others felt that the 7 day timeframe to replace a DBE is not long enough. Some opponents suggested changing the proposal so that it is desirable to replace a DBE with a DBE, but not mandatory. Some prime contractors also stated that there is a need to be compensated for the delays to replace a DBE. Those in favor of the proposal included five commenters representing State departments of transportation, transit authorities, and DBE advocacy groups. These commenters felt that contractors should make efforts to replace a DBE and failure to carry out the requirement to do so is a breach of contract.

DOT Response: When the Department amended the regulations in 2011 (the first phase of its recent focus on program improvements), we required prime contractors that terminate DBEs make GFE to find a replacement to perform at least the same amount of work under the contract to meet the contract goal established for the procurement. Thus, this GFE obligation currently exists and is not new. We agree that the GFE guidance in Appendix A used by recipients to assess the efforts made by bidders and offerors before contract award can also be used to evaluate efforts made by the contractor to replace a DBE after contract award. There is no need to separately identify steps that a recipient may require when a contractor is replacing a DBE. However, there is nothing that prevents a contractor from taking any of the steps included in the proposed amendment to the rules. Indeed, recipients may consider, as part of their evaluation of the efforts made by the contractor, whether DBEs were notified of subcontracting opportunities, whether new items of work were made available for subcontracting, what information was made available to DBEs, and what efforts were made to negotiate with DBEs.

The GFEs made by the contractor to obtain a replacement DBE should be documented and submitted to the recipient within a reasonable time after obtaining approval to terminate an existing DBE. To avoid needless delay and ensure timely action, we think 7 days is reasonable, but we have modified the rule to allow recipients to extend the time if necessary at the request of the contractor.

The existing regulations currently require a contract clause be included in prime contracts and subcontracts that make the failure by the contractor to carry out applicable requirements of 49 CFR Part 26 a material breach of contract, which may result in the termination of the contract or such other remedy as the recipient deems appropriate. See 49 CFR 26.13(b). Consequently, a contractor that fails to comply with the requirements for terminating or replacing a DBE would be in breach of contract, subject to contract sanctions that include termination of the contract. We need not replicate the provisions of § 26.13. We also will not prescribe what the appropriate contract sanctions or administrative remedies must be. However, we have revised § 26.13 to incorporate the list of remedies we proposed as other possible contract remedies recipients should consider. Many of the suggestions are sanctions currently used by some recipients. They include withholding progress payments, liquidated damages, disqualifying the contractor from future bidding, and assessing monetary penalties.

Copies of Quotes and Subcontracts

The Department proposed to require the apparent successful bidder/offeror, as part of its GFE documentation, provide copies of each DBE and non-DBE subcontractor quote it received in situations where the bidder/offeror selected a non-DBE firm to do work sought by a DBE. This information would help the recipient determine whether there is validity to any claims by a bidder/offeror that a DBE was rejected because its quote was too high. The contractor who is awarded the contract also would be required to submit copies of all DBE subcontracts.

There were 15 organizations that commented on the proposal regarding quotes and 19 commenters on the proposal regarding subcontracts. Commenters were almost evenly divided in their support for, or opposition to, requiring the submission of quotes under the limited circumstances set out in the proposed rule. A State department of transportation noted that the submission of quotes was already being implemented in its program. One supporter suggested this requirement should apply only when the DBE contract goal is not met. Opponents raised concerns about the burden imposed and questioned the benefit to be derived since the comparison of quotes is not viewed as a useful exercise. Regarding the submission of subcontracts, the commenters overwhelming opposed making this a requirement because of the burden. One commenter suggested that the proposal appears to duplicate an existing requirement of the Federal Highway Administration (FHWA) and another commenter questioned the steps that would be taken to protect confidential or proprietary information.

DOT Response: The GFE guidance in Appendix A, in its current form, instructs prime contractors to consider a number of factors when negotiating with a DBE and states that the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Thus, the reasonableness of a DBE's quote as compared to a non-DBE's quote is often

an issue cited by a prime contractor in selecting a non-DBE over a DBE. The Department believes that requiring a bidder/offeror to provide, as part of the GFE documentation, subcontractor quotes received by the bidder/offeror in those instances where a DBE's quote was rejected over a non-DBE's quote will assist recipients in determining the validity of claims made by the bidder/offeror that the DBE's quote was too high or unreasonable and has therefore decided to finalize this proposal. Further, we stress that only the quote would need to be submitted in these situations, not any additional information and only in instances where a non-DBE was selected over a DBE, thus limiting the burden of this requirement.

The Department recognizes that requiring the submission of DBE subcontracts may pose unnecessary burdens on contractors and recipients. Thus, the Department has decided to modify its proposal to only require that DBE subcontracts be made available to recipients upon request when needed to ensure compliance with the requirements of 49 CFR Part 26.

Good Faith Efforts Applied to Race-Neutral DBE Participation

We sought comment on whether some of the good faith efforts provisions of the rule concerning contracts with DBE goals should apply to DBEs on contracts that do not have a DBE goal. For example, the rules that restrict termination of DBEs and that impose good faith efforts obligations to replace DBEs that are dropped from a contract or project would apply regardless of whether the DBE's participation resulted from race-conscious or race-neutral measures.

Of the 28 commenters that responded to this question, only 3 expressed support and all three supporters were DBEs or organizations representing DBEs. Three commenters also were conflicted, unsure of whether the proposal would result in benefits to DBEs. The general contracting community, many State departments of transportation, and some transit agencies expressed opposition because they believe DBEs should be treated no different than non-DBEs on contracts with no DBE goals (the primary means of obtaining measurable DBE participation through race- and gender-neutral measures), and to do otherwise is to essentially convert what began as race-neutral conduct into race-conscious conduct.

DOT Response: The Department agrees with the points raised by the commenters opposing this change (specifically, that no distinction should be made between DBEs and non-DBEs when race-neutral measures are used to obtain participation) and has decided to maintain the status quo. The restrictions on terminating and replacing a DBE selected by a bidder or offeror to meet a contract goal are intended to hold the contractor to the good faith efforts commitment made to win the contract. No comparable commitment is made when DBE contract goals are not set.

Trucking 49 CFR 26.55(d)

The Department proposed to change the counting rule for trucking to allow 100% of a DBE's trucking services to be counted when the DBE uses its own employees as drivers but leases trucks from a non-DBE truck leasing company. This proposed change gives DBEs the same ability as non-DBEs to use their own drivers and supplement their fleets with leased trucks without sacrificing any loss of DBE credit because the trucks may be leased from a non-DBE leasing company. Consistent with the current prohibition on counting materials, supplies, equipment, etc., obtained from the prime contractor or its affiliates (49 CFR 26.55(a)(1)), trucks leased from the prime contractor would not be counted. As noted in the NPRM, this proposed rule change applies to counting only; it would not immunize companies from scrutiny due to potentially improper relationships between DBEs and non-DBEs that raise certification eligibility or fraud concerns.

More than 25 comments were received on this proposed change, mostly in favor of the modification. There were several commenters that believed the proposed rule would invite more fraud for an area that is one of the top means of obtaining DBE participation on Federal-aid contracts. Additional comments included expanding the definition of ''employees'' to expressly include those drivers that are hired by DBEs from the union hall on an as-needed basis to fulfill contracts, clarifying what constitutes ownership of trucks, eliminating the current option allowed under the rule that permits credit for trucks and drivers leased from non-DBEs, eliminating the need to obtain written consent from the operating administrations on the option chosen by the recipient; and reinforcing the restriction on not allowing a DBE to count trucks purchased or leased from the prime contractor.

DOT Response: The Department did not propose any changes in the NPRM to the existing rule that allows a DBE that leases trucks (and also leases the drivers) from a non-DBE firm to receive credit for the value of transportation services provided by the non-DBE firm up to the amount of credit provided by trucks owned by DBEs that are used on the contract. This option was added to the DBE program rules in 2003 (68 Fed. Reg. 35542–02) to recognize the practical reality of leasing in the trucking business and to respond to concerns about reduced opportunities for DBEs caused by the 1999 version of the counting rule. As indicated in the 2003 final rule, a recipient may choose the one-for-one option to credit trucks and drivers leased from non-DBEs or it may limit credit to fees and commissions for work done with non-DBE lessees, consistent with the 1999 version of the rule. If a recipient chooses to count the use of trucks and drivers leased from a non-DBE firm, as provided in the existing rule, the recipient's choice should be reflected in the recipient's DBE program plan, which is subject to approval by the cognizant operating administration (OA) to ensure appropriate safeguards are taken by the recipient to prevent fraud. Contrary to the way some commenters are reading the existing rule, it does not contemplate obtaining OA consent on a transaction-by-transaction basis.

The modification to the rule that the Department makes final today simply clarifies that trucks that are leased by a DBE from a non-DBE for use by the DBE's employees should be treated no differently than other equipment a DBE may lease to conduct its business. The value of the transportation services provided by the DBE would not be adversely impacted by the fact that the equipment used by the DBE's employees is leased instead of owned. This is consistent with the existing counting rule and with the basic principle that DBE participation should be counted for work performed with a DBE firm's own forces. The term ''employee'' is to be given its commonly understood dictionary meaning, and ''ownership'' includes the purchase of a truck or trucks through conventional financing arrangements.

Regular Dealer 49 CFR 26.55(e)

The Department proposed to codify guidance issued in 2011 on how to treat the services provided by a DBE acting as a regular dealer or a transaction expediter/broker for counting purposes (i.e., crediting the work of the DBE toward the goal). The guidance makes clear that counting decisions involving a DBE acting as a regular dealer are made on a contract-by-contract basis and not based on a general description or designation of a DBE as a regular

dealer. The Department also invited an open discussion of the regular dealer concept in light of changes in the way business is conducted. Specifically, we sought comment on: (1) How, if at all, changes in the way business is conducted should result in changes in the way DBE credit is counted in supply situations?; (2) what is the appropriate measure of the value added by a DBE that does not play a traditional regular dealer/middleman role in a transaction?; and (3) do the policy considerations for the current 60% regular dealer credit actually influence more use of DBEs as contractors that receive 100% credit?

The Department received over 50 comments from prime contractors, DBEs, and recipients, many of which emphasized the need for additional clarification of, or changes to, the terminology used to describe regular dealers, middlemen, transaction expediters, and brokers. The comments were evenly divided over whether the guidance should be codified in the regulations. Those in support agreed that the determination of whether or not a DBE is functioning as a regular dealer as defined in the existing rule should be based on the role performed by the DBE on the contract, which may vary from contract to contract. Those opposed to the contract-by-contract approach, represented mostly, but not exclusively, by prime contractors, argued that the approach reflected in the guidance is burdensome and that once a recipient determines at certification that a DBE is a supplier, a wholesaler, a manufacturer, a transaction expediter, a middleman, or a broker, the credit allowed under the rules should be applied. To do otherwise creates inconsistency, uncertainty, and exposes the prime and the DBE to risks associated with fraud investigations in this area. It is the responsibility of the certifier, they argue, to ensure that a DBE certified as a supplier, for example (and thereby acting as a regular dealer), is, in fact, a supplier and not a transaction expediter. Indeed, several commenters expressed the view that certifiers should be allowed to certify a DBE as a ''regular dealer.'' Followed to its logical conclusion, once certified, how the work to be performed by the DBE is counted would be automatic without regard to what the DBE is actually doing on the contract.

Many comments addressed the changing business environment where the best method of delivering supplies ordered from a non-DBE manufacturer may in fact be drop-ship rather than delivery by the DBE regular dealer using its own trucks. One commenter stated that the requirement that a DBE own and operate its own distribution equipment directly conflicts with industry practice and creates a greater burden and challenge to DBEs. Similarly, some maintain the requirement for an inventory or store front is outdated. The way business is conducted today, they argue, services provided by wholesalers or e-Commerce businesses do not require an inventory or a store open to the public. Several commenters indicated that they would be comfortable with the elimination of the distinct categories and only have a single distinction of a goods supplier from a non-DBE manufacturer with a set percentage of dollars that could be counted or only using fees and commissions as the amount that can be counted as done currently for transaction expediters and brokers. To encourage greater use of DBE contractors to meet contract goals, one commenter suggested placing a cap (e.g., no more than 50%) on how much of a contract goal could be met using DBE suppliers.

There were suggestions that the Department eliminate altogether regular dealers and brokers from the rule. Others countered that any proposal to eliminate counting regular dealer participation toward contract goals would severely reduce the pool of ready, willing, and able DBEs given how often the regular dealer credit is used to meet contract goals; such a proposal, they maintain, should result in a corresponding reduction in goals. Other commenters believe that it is important to keep the regular dealer concept and consider increasing the counting percentage due to the value added services they provide. Still others thought a complete overhaul of the regular dealer provisions in the rule is needed to recognize decades of changes in the construction industry, and no modifications to the rule should be made until further analysis is done.

DOT Response: The Department has decided to codify the guidance on the treatment of counting decisions that involve DBEs functioning as regular dealers. This guidance is consistent with the basic counting principles set out in the rule that apply regardless of the kind of work performed by the DBE. Specifically, the counting rules apply to a specific contract in which a DBE participates based on the value of work actually performed by the DBE that involves a commercially useful function on that contract. Throughout 49 CFR 26.55 there are numerous references to ''a contract,'' ''the contract,'' or ''that contract.'' In other words, counting is by definition a ''contract-by-contract'' determination made by recipients after evaluating the work to be performed by the DBE on a particular contract.

The Department appreciates the thought that went into the varied comments received on the questions we posed and the overall interest in the subject. In the context of this discussion, it is important to reiterate that certification and counting are separate concepts in the DBE rule. This applies regardless of the type of work the DBE is certified to perform. It is also important to note that DBEs must be certified in the most specific NAICS code(s) for the type of work they perform and that there is no regular dealer NAICS code. Regular dealer is a term of art used in the context of the DBE program. That said, the Department believes that more analysis and discussion is needed to make informed policy decisions about appropriate modifications to the regulations governing regular dealers, transaction expediters, and brokers. We think it more appropriate at this point to develop additional guidance to address different business scenarios rather than promulgate regulatory requirements or restrictions beyond those that currently exist. We will continue the conversation through future stakeholder meetings.

Ethics and Conflicts of Interest

The Department sought comment on whether Part 26 should be amended (or guidance issued) to add provisions concerning ethics and conflicts of interest to help play a constructive role in empowering DBE officials in resisting inappropriate political pressures. At the same time, the Department questioned whether such a provision would be effectual and whether the provision could be drafted so as not to be overly detailed. The Department also welcomed suggestions about ethics and conflicts of interest.

Less than 25 commenters elected to address this subject; the significant majority of commenters expressed support for adding ethics and conflict of interest provisions to enable DBE certification officials and others to resist inappropriate pressures. An advocacy group commended the Department for initiating a discussion about ethics. A State transportation department suggested including applicable penalties and offering protection via the Whistleblower Protection Act. An airport sponsor supported adding provisions that clarify the roles of staff who administer the selection process.

A State transit authority did not believe that effective guidance could be provided in the regulation without being overly detailed and burdensome. Moreover, the commenter recognized

that while adding such provisions would play a constructive role, they would not totally eradicate inappropriate pressure. A State transportation department directed the Department to professional codes of conduct for the fields of law and engineering as examples. An advocacy group and a DBE noted that a code of ethics might provide recipients with a ''safety net'' when responding to undue pressure. Another State transportation department supports the provision if DOT takes quick action against known abusers of ethics. A DBE commenter recommended a workgroup approach be utilized to prepare draft language.

DOT Response: There was general support among the commenters for establishing a code of ethics of some kind to insulate or protect DBE program administrators from undue pressure to take actions inconsistent with the intent and language of the DBE program rules. However, very few of the commenters made suggestions on the details of such a code or on the kind of provisions that might be added to address specific concerns. As indicated in the NPRM, recipients and their staffs are subject to State and local codes of ethics that govern public employees and officials in the performance of their official duties and responsibilities, including the responsibilities they carry out in administering the DBE program as a condition of receiving Federal financial assistance. Of course, grant recipients are subject to the common grant rules which prohibit participating in the selection, award, or administration of a contract supported by Federal funds if a conflict of interest would be involved. Because we lack sufficient information, at this point, to determine the extent to which widespread problems exist or how best to approach the issue—through regulations or guidance—the Department thinks it best to hold off on adopting ethics rules for the DBE program to supplement existing State and local ethics codes. Instead, the Department may engage stakeholders in a further discussion to aid in identifying appropriate next steps.

Appendix A—Good Faith Efforts Guidance

The Department proposed several revisions to Appendix A to Part 26—Guidance Concerning Good Faith Efforts to clarify and reinforce the GFE obligation of bidders/offerors and to provide additional guidance to recipients. We proposed to add more examples of the types of actions recipients may consider when evaluating the bidders'/offerors' GFE to obtain DBE participation. The proposed examples included conducting market research to identify small business contractors and suppliers and establishing flexible timeframes for performance and delivery schedules that encourage and facilitate DBE participation. We reinforced concepts that we have emphasized in communicating with recipients over the years: Namely, that a contractor's desire to perform work with its own forces is not a basis for not making GFE and rejecting a replacement DBE that submits a reasonable quote; and reviewing the performance of other bidders should be a part of the GFE evaluation. The Department also proposed to add language specifying that the rejection of a DBE simply because it was not the low bidder is not a practice considered to be a good faith effort.

There were 25 comments collected that opposed the suggestion that flexible timeframes and schedules be established to facilitate DBE participation. The comments received were submitted by prime contractors, contractor associations, and State departments of transportation. These organizations stated that a ''flexible timeframe'' was unrealistic and went against the nature of the construction industry. Other organizations stated the need to further quantify what constitutes an ''unreasonable quote'' when making GFE to replace a DBE. There were two organizations that supported these provisions. U.S. Representative Judy Chu agreed that there can be no definitive checklist, but suggested that best practices be collected and disseminated to clarify the issue. One State department of transportation agreed that the bidder cannot reject a DBE simply due to price.

In the NPRM, we also proposed in Appendix A that DOT operating administrations may change recipients' good faith efforts decisions. There were a few comments regarding this proposal, all in opposition. The commenters included a DBE, prime contractor, a State department of transportation, and a contractors association. The prime contractor noted that operating administrations should be involved throughout the good faith efforts review process and not after the recipient has made a decision. There were no comments in support of this proposal.

DOT Response: It is important to reiterate and reinforce that Appendix A is guidance to be used by recipients in considering the good faith efforts of bidders/offerors. It does not constitute a mandatory, exclusive, or exhaustive checklist. Rather, a good faith efforts evaluation looks at the ''quality, quantity, and intensity of the different kinds of efforts that the bidder has made.'' The proposed revisions to the guidance made by the Department are based on experience gained since the development of the guidance in 1999 and are intended to incorporate clarifications and additional examples of the different kinds of activities to consider. We have modified the final guidance in keeping with the existing purpose and intent. The guidance also seeks to indicate what reasonably may not be viewed as a demonstration of good faith efforts. In this regard, rejecting a DBE only because it was not the low bidder is not consistent with the longstanding idea that a bidder/offeror should consider a variety of factors when negotiating with a DBE, including the fact that there may be additional costs involved in finding and using DBEs, as currently stated in the existing guidance. Similarly, the inability to find a replacement DBE at the original price is not, without more, sufficient to demonstrate GFE were made to replace the original DBE. As currently stated under the existing guidance, a firm's price is one of many factors to consider in negotiating in good faith with interested DBEs.

The Department has decided to make no change to the current role of the operating administrations with respect to the GFE determinations made by recipients. It is the responsibility of recipients to administer the DBE program consistent with the requirements of 49 CFR Part 26, and it is the responsibility of the operating administrations to oversee recipients' program administration to ensure compliance through appropriate enforcement action if necessary. Such action includes refusing to approve or provide funding for a contract awarded in violation of 49 CFR 26.53(a). The proposed change may confuse the relative roles and responsibilities of the recipients and the operating administrations and consequently has been removed from the final rule.

Technical Corrections

The Department is amending the following provisions in 49 CFR Part 26 to correct technical errors:

1. Section 26.3(a)—Include a reference to the Highway and Transit funds authorized under SAFETEA–LU and MAP–21.

2. Section 26.83(c)(7)—Remove the reference to the DOT/SBA MOU since the MOU has lapsed.

3. Section 26.89(a)—Amend to recognize that the DOT/SBA MOU has lapsed.

Regulatory Analyses and Notices

Executive Orders 12866 and 13563 (Regulatory Planning and Review)

This final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Order. It does not create significant cost burdens, does not affect the economy adversely, does not interfere or cause a serious inconsistency with any action or plan of another agency, does not materially alter the impact of entitlements, grants, user fees or loan programs; and does not raise novel legal or policy issues. The final rule is essentially a streamlining of the provisions for implementing an existing program, clarifying existing provisions and improving existing forms. To the extent that clearer certification requirements and improved documentation can forestall DBE fraud, the rule will result in significant savings to State and local governments. This final rule does not contain significant policy-level initiatives, but rather focuses on administrative changes to improve program implementation. The Department notes that several commenters, particularly general contractors and their representatives, argued that the NPRM should have been designated as ''significant.'' Although the Department continues to believe that the designation of the NPRM was correct based on the intent of this rulemaking, we note that, as discussed above, we have decided to not finalize at this time many of the provisions that those commenters argued were significant changes to the DBE program.

Executive Order 12372 (Intergovernmental Review)

The final rule is a product of a process, going back to 2007, of stakeholder meetings and written comment that generated significant input from State and local officials and agencies involved with the DBE program in transit, highway, and airport programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), we have evaluated the effects of this final rule on small entities and anticipate that this action will not have a significant economic impact on a substantial number of small entities. The underlying DBE rule does deal with small entities: All DBEs are, by definition, small businesses. Also, some FAA and FTA recipients that implement the program are small entities. However, the changes to the rule are primarily technical modifications to existing requirements (e.g., improved forms, refinements of certification provisions) that will have little to no economic impact on program participants. Therefore, the changes will not create significant economic effects on anyone. In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. As noted above, there is no substantial compliance cost imposed on State and local agencies, who will continue to implement the underlying program with administrative improvements proposed in the rule. The proposed rule does not involve preemption of State law. Consequently, we have analyzed this proposed rule under the Order and have determined that it does not have implications for federalism.

National Environmental Policy Act (NEPA)

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 3.c.5 of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Highway Administration's implementing procedures, ''[p]romulgation of rules, regulations, and directives.'' 23 CFR 771.117(c)(20). The purpose of this rulemaking is to make technical improvements to the Department's DBE program, including modifications to the forms used by program and certification-related changes. While this rule has implications for eligibility for the program—and therefore may change who is eligible for participation in the DBE program—it does not change the underlying programs and projects being carried out with DOT funds. Those programs and projects remain subject to separate environmental review requirements, including review under NEPA. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Paperwork Reduction Act

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. This action contains additional amendments to the existing information collection requirements previously approved under OMB Control Number 2105–0510. As required by the Paperwork Reduction Act, the Department has submitted these information collection amendments to OMB for its review. The Department will announce the finalization of this information collection request in a separate **Federal Register** notice following OMB approval. The NPRM contained estimates of the burden associated with the additional collection requirements proposed in that document. Various commenters stated that the Department understated the proposed burden for the collections associated with the application form and personal net worth form. As discussed above in the relevant portions of the preamble, the Department is sensitive to those concerns and has revised those collections to minimize what information must be submitted and to simplify other aspects of the forms. For each of these information collections, the title, a description of the entity to which it applies, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below.

1. Application Form

Today's final rule modifies the application form for the DBE program. In the NPRM, the Department explained that its estimate of 8 total burden hours per applicant to complete its DBE or

ACDBE certification application with supporting documentation was based on discussions the Department has had with DBEs in the past. The comments and the Department's response to those comments are discussed above in the preamble.

The number of new applications received each year by Unified Certification Program members is difficult to estimate. There is no central repository for DBE certification applications and we predict that the frequency of submissions at times vary according to construction season (high applications when the season is over), the contracting opportunities available in the marketplace, and the number of new transportation-related business formations or expansions. To get some estimate however, the Department contacted recipients during the process of developing the NPRM. The agencies we contacted reported receiving between 1–2 applications per month, 5–10 per month, or on the high end 80–100 per month. There are likely several reasons for the variance. Jurisdictions that are geographically contiguous to other states (such as Maryland) and/or have a high DBE applicant pool may receive a higher number whereas jurisdictions in remote areas of the country with smaller numbers of firms may have lower applicant requests for DBE certification. These rough numbers likely do not include requests for expansion of work categories from existing firms that are already certified.

Frequency: Once during initial DBE or ACDBE certification.

Estimated Average Burden per Response: 8 hours.

Number of Respondents: 9,000–9,500 applicants each year.

Estimated Total Annual Burden Hours: 72,000–76,000 hours per year.

2. PNW Form

A small business seeking to participate in the DBE and ACDBE programs must be owned and controlled by a socially and economically disadvantaged individual. When a recipient determines that an individual's net worth exceeds $1.32 million, the individual's presumption of economic disadvantage is said to have been conclusively rebutted. In order to make this determination, the current rule requires recipients to obtain a signed and notarized statement of personal net worth from all persons who claim to own and control a firm applying for DBE or ACDBE certification and whose ownership and control are relied upon for the certification. These personal net worth statements must be accompanied by appropriate supporting documentation (e.g., tax returns). The form finalized in this rule would replace use of an SBA form suggested in current regulations.

As discussed above in the preamble, we estimate that compiling information for and filling out this form would take approximately 2 hours, slightly longer than that for the SBA form currently in use. As explained in further detail in the above preamble, the Department has chosen not to finalize its proposal to require a PNW form with each annual affidavit of no change. Thus, the number of respondents who must submit a PNW form is the same as the number of applications.

Frequency: Once during initial DBE certification. For the DBE/ACDBE programs, information regarding the assets and liabilities of individual owners is necessary for recipients of grants from the Federal Transit Administration, the Federal Aviation Administration, and the Federal Highway Administration, to make responsible decisions concerning an applicant's economic disadvantage under the rule. All persons who claim to own and control a firm applying for DBE or ACDBE certification and whose ownership and control are relied upon for the certification will complete the form.

Estimated Average Burden per Response: 2 hours.

Number of Respondents: 9,000–9,500 applicants each year.

Estimated Burden: 18,000–19,000 hours per year for applications.

3. Material With Annual Affidavits of No Change

Each year, a certified firm must submit an affidavit of no change. Although the Department proposed that DBE would need to submit various additional documentation with the affidavit (e.g., an updated PNW statement and records of transfers) today's final rule only requires that the owner and the firm's (including affiliates) most recent completed IRS tax return, IRS Form 4506 (Request for Copy or Transcript of Tax Return) be submitted with the affidavit. Collection and submission of these items during the annual affidavit is estimated to take approximately 1.5 hours.

Estimated Average Burden per Response: 1.5 hours.

Respondents: The approximately 30,000 certified DBE firms.

Burden: Approximately 45,000 hours per year.

4. Reporting Requirement for Percentages of DBEs in Various Categories

The final rule implements a statutory requirement calling on UCPs to annually report the percentages of white women, minority men, and minority women who control DBE firms. To carry out this requirement, the 52 UCPs would read their existing Directories, noting which firms fell into each of these three categories. The UCPs would then calculate the percentages and email their results to the Departmental Office of Civil Rights. It would take each UCP an estimated 3 hours to comb through their Directories, and another three minutes to calculate the percentages and send an email to *DBE@DOT.GOV*.

Estimated Average Burden per Response: 3 hours, 3 minutes.

Respondents: 52.

Burden: Approximately 158.5 hours.

5. Uniform Report of DBE Commitments/Awards and Payments

As part of this rulemaking, the Department is reinstating the information collection entitled, ''Uniform Report of DBE Commitments/Awards and Payments,'' OMB Control No. 2105–0510, consistent with the changes proposed in this final rule. This collection requires that DOT Form 4630 be submitted once or twice per year by each recipient having an approved DBE program. The report form is collected from recipients by FHWA, FTA, and FAA, and is used to enable DOT to conduct program oversight of recipients' DBE programs and to identify trends or problem areas in the program. This collection is necessary for the Department to carry out its oversight responsibilities of the DBE program, since it allows the Department to obtain information from the recipients about the DBE participation they obtain in their programs.

In this final rule, the Department modified certain aspects of this collection in response to issues raised by stakeholders: (1) Creating separate forms for routine DBE reporting and for transit vehicle manufacturers (TVMs) and mega projects; (2) amending and clarifying the report's instructions to better explain how to fill out the forms; and (3) changing the forms to better capture the desired DBE data on a more continuous basis, which should also assist with recipients' post-award oversight responsibilities.

Frequency: Once or twice per year.

Estimated Average Burden per Response: 5 hours per response.

Number of Respondents: 1,250. The Department estimates that

approximately 550 of these respondents prepare two reports per year, while approximately 700 prepare one report per year.

Estimated Burden: 9,000 hours.

List of Subjects in 49 CFR Part 26

Administrative practice and procedure, Airports, Civil Rights, Government contracts, Grant-programs—transportation; Mass transportation, Minority Businesses, Reporting and recordkeeping requirements.

Issued this 19th day of September 2014, at Washington, DC.

Anthony R. Foxx,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation amends 49 CFR part 26 as follows:

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

■ 1. The authority citation for part 26 continues to read as follows:

Authority: 23 U.S.C. 304 and 324; 49 U.S.C. 2000d, et seq., 49 U.S.C. 47107, 47113, 47123; Section 1101(b) and divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, 126 Stat. 405, and 23 U.S.C. 403.

■ 2. In § 26.1, redesignate paragraphs (f) and (g) as paragraphs (g) and (h), and add new paragraph (f) to read as follows:

§ 26.1 What are the objectives of this part?

* * * * *

(f) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.

* * * * *

■ 3. In § 26.3, amend paragraphs (a)(1) and (2) by adding a sentence to the end of each to read as follows:

§ 26.3 To whom does this part apply?

(a) * * *

(1) * * * Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, 126 Stat. 405.

(2) * * * Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, 126 Stat. 405.

* * * * *

■ 4. Amend § 26.5 by:

■ a. Adding in alphabetical order definitions for ''Assets'', ''Business, business concern or business enterprise'', ''Contingent Liability'', and ''Days'';

■ b. Removing the definition of ''DOT/SBA Memorandum of Understanding'';

■ c. Revising the definition of ''immediate family member'';

■ d. Adding in alphabetical order definition for ''Liabilities''

■ e. Revising the definitions of ''primary industry classification'', ''principal place of business'', and ''socially and economically disadvantaged individual''; and

■ f. Adding in alphabetical order definitions for ''Spouse'' and ''Transit vehicle manufacturer (TVM)''.

The additions and revisions read as follows:

§ 26.5 What do the terms used in this part mean?

* * * * *

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

* * * * *

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

* * * * *

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

* * * * *

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

* * * * *

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

* * * * *

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

* * * * *

Primary industry classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: *http://www.census.gov/eos/www/naics/.*

* * * * *

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

* * * * *

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) ''Black Americans,'' which includes persons having origins in any of the Black racial groups of Africa;

(ii) ''Hispanic Americans,'' which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) ''Native Americans,'' which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

(iv) ''Asian-Pacific Americans,'' which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) ''Subcontinent Asian Americans,'' which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale ''off the lot'' are not considered transit vehicle manufacturers.

* * * * *

■ 5. In § 26.11, add paragraphs (d) and (e) to read as follows:

§ 26.11 What records do recipients keep and report?

* * * * *

(d) You must maintain records documenting a firm's compliance with the requirements of this part. At a minimum, you must keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records must be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement. Other certification or compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever is longer.

(e) The State department of transportation in each UCP established pursuant to § 26.81 of this part must report to the Department of Transportation's Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

(1) Women;

(2) Socially and economically disadvantaged individuals (other than women); and

(3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

■ 6. Revise § 26.13, to read as follows:

§ 26.13 What assurances must recipients and contractors make?

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance: The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments;

(2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying the contractor from future bidding as non-responsible.

§ 26.21 [Amended]

■ 7. In § 26.21, paragraph (a)(1) add the word ''primary'' before the word ''recipients'', and in paragraphs (a)(2) and (3), remove the word ''exceeding'' and add in its place the words ''the cumulative total value of which exceeds''.

■ 8. In § 26.45, revise paragraphs (c)(2), (c)(5); (d) introductory text, (e)(3), (f)(4), and (g) to read as follows:

§ 26.45. How do recipients set overall goals?

* * * * *

(c) * * *

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on your DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. When using this approach, you must establish a mechanism (documented in your goal submission) to directly capture data on DBE and non-DBE prime and

subcontractors that submitted bids or quotes on your DOT-assisted contracts.

* * * * *

(5) *Alternative methods.* Except as otherwise provided in this paragraph, you may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market. The exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of paragraph (c)(2) of this section, is not an acceptable alternative means of determining the availability of DBEs.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at your overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

* * * * *

(e) * * *

(3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

(i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.

(ii) A project goal covers the entire length of the project to which it applies.

(iii) The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.

(iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

(f) * * *

(4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the operating administration will be guided by goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.

* * * * *

(g)(1) In establishing an overall goal, you must provide for consultation and publication. This includes:

(i) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it must occur before you are required to submit your methodology to the operating administration for review pursuant to paragraph (f) of this section. You must document in your goal submission the consultation process you engaged in. Notwithstanding paragraph (f)(4) of this section, you may not implement your proposed goal until you have complied with this requirement.

(ii) A published notice announcing your proposed overall goal before submission to the operating administration on August 1st. The notice must be posted on your official Internet Web site and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal must be posted on your official Internet Web site.

(2) At your discretion, you may inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at your principal office and for a 30-day comment period. Notice of the comment period must include addresses to which comments may be sent. The public comment period will not extend the August 1st deadline set in paragraph (f) of this section.

* * * * *

■ 9. Revise § 26.49 to read as follows:

§ 26.49 How are overall goals established for transit vehicle manufacturers?

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(1) Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.

(2) A TVM's failure to implement the DBE Program in the manner as prescribed in this section and throughout 49 CFR part 26 will be deemed as non-compliance, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.

(3) FTA recipient's failure to comply with the requirements set forth in paragraph (a) of this section may result in formal enforcement action or appropriate sanction as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).

(4) FTA recipients are required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal.

(1) In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying § 26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will bid on during the fiscal year in question, less the portion(s) attributable to the manufacturing process performed entirely by the transit vehicle manufacturer's own forces.

(i) You must consider and include in your base figure all domestic contracting opportunities made available to non-DBE firms; and

(ii) You must exclude from this base figure funds attributable to work performed outside the United States and its territories, possessions, and commonwealths.

(iii) In establishing an overall goal, the transit vehicle manufacturer must

provide for public participation. This includes consultation with interested parties consistent with § 26.45(g).

(2) The requirements of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) Transit vehicle manufacturers awarded must comply with the reporting requirements of § 26.11 of this part including the requirement to submit the Uniform Report of Awards or Commitments and Payments, in order to remain eligible to bid on FTA assisted transit vehicle procurements.

(d) Transit vehicle manufacturers must implement all other applicable requirements of this part, except those relating to UCPs and DBE certification procedures.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

(f) As a recipient you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

■ 10. In § 26.51, revise paragraph (a) to read as follows:

§ 26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

* * * * *

■ 11. In § 26.53, revise paragraph (b), redesignate paragraph (f)(1) as (f)(1)(i) and add paragraph (f)(1)(ii), revise paragraphs (g) and (h), and add paragraph (j) to read as follows:

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

* * * * *

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

(i) The names and addresses of DBE firms that will participate in the contract;

(ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;

(iii) The dollar amount of the participation of each DBE firm participating;

(iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and

(v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.

(vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and

(3)(i) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section—

(A) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or

(B) No later than 7 days after bid opening as a matter of responsibility. The 7 days shall be reduced to 5 days beginning January 1, 2017.

(ii) Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.

* * * * *

(f)(1) * * *

(ii) You must include in each prime contract a provision stating:

(A) That the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph (f); and

(B) That, unless your consent is provided under this paragraph (f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

* * * * *

(g) When a DBE subcontractor is terminated as provided in paragraph (f) of this section, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement. The good faith efforts shall be documented by the contractor. If the recipient requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

(h) You must include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section you deem appropriate if the prime contractor fails to comply with the requirements of this section.

* * * * *

(j) You must require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

■ 12. In § 26.55, revise paragraph (d)(5), redesignate paragraph (d)(6) as (d)(7), and add new paragraph (d)(6) and paragraph (e)(4) to read as follows:

§ 26.55 How is DBE participation counted toward goals?

* * * * *

(d) * * *

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases

trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate DOT operating administration.

Example to paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks equipped with drivers from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

(6) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example to paragraph (d)(6): DBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

* * * * *

(e) * * *

(4) You must determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expediter) on a contract-by-contract basis.

* * * * *

■ 13. In § 26.65, revise paragraph (a), and in paragraph (b), remove ''in excess of $22.41 million'' and add in its place ''in excess of $23.98 million''.

The revision reads as follows:

§ 26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant.

* * * * *

■ 14. Revise § 26.67 to read as follows:

§ 26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed $1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, you must use the DOT personal net worth form provided in appendix G to this part without change or revision. Where necessary to accurately determine an individual's personal net worth, you may, on a case-by-case basis, require additional financial information from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). Requests for additional information shall not be unduly burdensome or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. Recipients must ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's personal net worth form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or State law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other State to which the individual's firm has applied for certification under § 26.85 of this part.

(b) *Rebuttal of presumption of disadvantage.* (1) An individual's presumption of economic disadvantage may be rebutted in two ways.

(i) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds $1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

Example to paragraph (b)(1)(i): An individual with very high assets and significant liabilities may, in accounting terms, have a PNW of less than $1.32 million. However, the person's assets collectively (e.g., high income level, a very expensive house, a yacht, extensive real or personal property holdings) may lead a reasonable person to conclude that he or she is not economically disadvantaged. The recipient may rebut the individual's presumption of economic disadvantage under these circumstances, as provided in this section, even though the individual's PNW is less than $1.32 million.

(ii)(A) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section

demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. In making this determination, as a certifying agency, you may consider factors that include, but are not limited to, the following:

(*1*) Whether the average adjusted gross income of the owner over the most recent three year period exceeds $350,000;

(*2*) Whether the income was unusual and not likely to occur in the future;

(*3*) Whether the earnings were offset by losses;

(*4*) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;

(*5*) Other evidence that income is not indicative of lack of economic disadvantage; and

(*6*) Whether the total fair market value of the owner's assets exceed $6 million.

(B) You must have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of § 26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds $1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage, so long as his or her PNW remains above that amount.

(c) *Transfers within two years.* (1) Except as set forth in paragraph (c)(2) of this section, recipients must attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of recipient's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients must not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds $1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of appendix E of this part.

■ 15. In § 26.69, revise paragraphs (a) and (c) to read as follows:

§ 26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices.

* * * * *

(c)(1) The firm's ownership by socially and economically disadvantaged individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Proof of contribution of capital should be submitted at the time of the application. When the contribution of capital is through a loan, there must be documentation of the value of assets used as collateral for the loan.

(2) Insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, mere participation in a firm's activities as an employee, or capitalization not commensurate with the value for the firm.

(3) The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. Any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s), are grounds for denial.

(4) Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

Examples to paragraph (c): (i) An individual pays $100 to acquire a majority interest in a firm worth $1 million. The individual's contribution to capital would not be viewed as substantial.

(ii) A 51% disadvantaged owner and a non-disadvantaged 49% owner contribute $100 and $10,000, respectively, to acquire a firm grossing $1 million. This may be indicative of a pro forma arrangement that does not meet the requirements of (c)(1).

(iii) The disadvantaged owner of a DBE applicant firm spends $250 to file articles of incorporation and obtains a $100,000 loan, but makes only nominal or sporadic payments to repay the loan. This type of contribution is not of a continuing nature.

* * * * *

■ 16. In § 26.71, revise paragraphs (e) and (l) to read as follows:

§ 26.71 What rules govern determinations concerning control?

* * * * *

(e) Individuals who are not socially and economically disadvantaged or immediate family members may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

* * * * *

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the nondisadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-disadvantaged individual unless the disadvantaged individual now owning the firm demonstrates to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a nondisadvantaged individual who formerly owned and/or controlled the firm.

* * * * *

§ 26.73 [Amended]

■ 17. In § 26.73, in paragraph (g), remove the words ''unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified'' and in paragraph (h), remove ''26.35'' and add in its place ''26.65''.

■ 18. In § 26.83, revise paragraphs (c), (h), and (j), to read as follows:

§ 26.83 What procedures do recipients follow in making certification decisions?

* * * * *

(c)(1) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

(i) Perform an on-site visit to the firm's principal place of business. You must interview the principal officers and review their résumés and/or work histories. You may interview key personnel of the firm if necessary. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(ii) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing

(iii) Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;

(iv) Determine the work history of the firm, including contracts it has received, work it has completed; and payroll records;

(v) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any.

(vi) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(vii) Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service.

(viii) Require potential DBEs to complete and submit an appropriate application form, except as otherwise provided in § 26.85 of this part.

(2) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the written approval of the concerned operating administration, for supplementing the form by requesting specified additional information not inconsistent with this part.

(3) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by State law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(4) You must review all information on the form prior to making a decision about the eligibility of the firm. You may request clarification of information contained in the application at any time in the application process.

* * * * *

(h)(1) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of § 26.87 of this part, except as provided in § 26.67(b)(1) of this part.

(2) You may not require DBEs to reapply for certification or undergo a recertification process. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under § 26.88), a complaint, or other information concerning the firm's eligibility. If information comes to your attention that leads you to question the firm's eligibility, you may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

* * * * *

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under § 26.109(c).

* * * * *

■ 19. In § 26.86, remove and reserve paragraph (b) and add a sentence to the end of paragraph (c) to read as follows:

§ 26.86 What rules govern recipients' denials of initial requests for certification?

* * * * *

(c) * * * An applicant's appeal of your decision to the Department

pursuant to § 26.89 does not extend this period.

* * * * *

■ 20. In § 26.87, revise paragraphs (f) and (g) to read as follows:

§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?

* * * * *

(f) *Grounds for decision.* You may base a decision to remove a firm's eligibility only on one or more of the following grounds:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information relevant to eligibility that has been concealed or misrepresented by the firm;

(4) A change in the certification standards or requirements of the Department since you certified the firm;

(5) Your decision to certify the firm was clearly erroneous;

(6) The firm has failed to cooperate with you (see § 26.109(c));

(7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see § 26.73(a)(2)); or

(8) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph (g) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in paragraph (d) of this section.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under § 26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

* * * * *

■ 21. Add § 26.88 to read as follows:

§ 26.88 Summary suspension of certification.

(a) A recipient shall immediately suspend a DBE's certification without adhering to the requirements in § 26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

(b)(1) A recipient may immediately suspend a DBE's certification without adhering to the requirements in § 26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by § 26.83(i) of this part or fails to timely file an affidavit of no change under § 26.83(j).

(2) In determining the adequacy of the evidence to issue a suspension under paragraph (b)(1) of this section, the recipient shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(c) The concerned operating administration may direct the recipient to take action pursuant to paragraph (a) or (b) this section if it determines that information available to it is sufficient to warrant immediate suspension.

(d) When a firm is suspended pursuant to paragraph (a) or (b) of this section, the recipient shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.

(e) Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under § 26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

(f) While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

(g) Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the recipient information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the recipient must either lift the suspension and reinstate the firm's certification or commence a decertification action under § 26.87 of this part. If the recipient commences a decertification proceeding, the suspension remains in effect during the proceeding.

(h) The decision to immediately suspend a DBE under paragraph (a) or (b) of this section is not appealable to the US Department of Transportation. The failure of a recipient to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. Department of Transportation under § 26.89 of this part, as a constructive decertification.

■ 22. In § 26.89, revise paragraphs (a)(1) and (3), (c), and (e) to read as follows:

§ 26.89 What is the process for certification appeals to the Department of Transportation?

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms, you may make an administrative appeal to the Department.

* * * * *

(3) Send appeals to the following address: U.S. Department of Transportation, Departmental Office of Civil Rights, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

* * * * *

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late

filing of the appeal or in the interest of justice.

* * * * *

(e) The Department makes its decision based solely on the entire administrative record as supplemented by the appeal. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

* * * * *

■ 23. Revise appendix A to part 26 to read as follows:

Appendix A to Part 26—Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, you have the responsibility to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. (1) Conducing market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. (1) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in § 26.53(b)(2)((vi), you must also require the

contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

VI . A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

■ 24. Revise appendix B to part 26 to read as follows:

Appendix B to 49 CFR Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS/COMMITMENTS AND PAYMENTS

Recipients of Department of Transportation (DOT) funds are expected to keep accurate data regarding the contracting opportunities available to firms paid for with DOT dollars. Failure to submit contracting data relative to the DBE program will result in noncompliance with Part 26. All dollar values listed on this form should represent the DOT share attributable to the Operating Administration (OA): Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) to which this report will be submitted.

1. Indicate the DOT (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.

2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If you are an FTA recipient, indicate the Grant/Project numbers covered by this report. If more than ten attach a separate sheet.

3. Specify the Federal fiscal year (i.e., October 1–September 30) in which the covered reporting period falls.

4. State the date of submission of this report.

5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. For FHWA and FTA recipients, if this report is due June 1, data should cover October 1–March 31. If this report is due December 1, data should cover April 1–September 30. If the report is due to the FAA, data should cover the entire year.

6. Provide the name and address of the recipient.

7. State your overall DBE goal(s) established for the Federal fiscal year of the report being submitted to and approved by the relevant OA. Your overall goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral projections (both of which include gender-conscious/neutral projections). The Race Conscious projection should be based on measures that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a race conscious measure. The Race Neutral projection should include measures that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.

Section A: Awards and Commitments Made During This Period

The amounts in items 8(A)–10(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts and should be rounded to the nearest dollar.

Line 8: Prime contracts awarded this period: The items on this line should correspond to the contracts directly between the recipient and a supply or service contractor, with no intermediaries between the two.

8(A). Provide the *total dollar amount* for all prime contracts assisted with DOT funds and awarded during this reporting period. This value should include the entire Federal share of the contracts without removing any amounts associated with resulting subcontracts.

8(B). Provide the *total number* of all prime contracts assisted with DOT funds and awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the *dollar amount* awarded in prime contracts to certified DBE firms during this reporting period. This amount should not include the amounts sub contracted to other firms.

8(D). From the total number of prime contracts awarded in item 8(B), specify the *number* of prime contracts awarded to certified DBE firms during this reporting period.

8(E&F). This field is closed for data entry. Except for the very rare case of DBE-set asides permitted under 49 CFR part 26, all prime contracts awarded to DBES are regarded as race-neutral.

8(G). From the total dollar amount awarded in item 8(C), provide the *dollar amount* awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral in item 7 and the explanation in item 8 of project types to include.

8(H). From the total number of prime contracts awarded in 8(D), specify the *number* awarded to DBEs through Race Neutral methods.

8(I). Of all prime contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

Line 9: Subcontracts awarded/committed this period: Items 9(A)–9(I) are derived in the same way as items 8(A)–8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.

9(A). If filling out the form for general reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded in prime contracts in 8(A), and therefore should never be greater than the amount awarded in prime contracts. If filling out the form for project reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded or previously in prime contracts in 8(A). The sum of all subcontract amounts in consecutive periods should never exceed the sum of all prime contract amounts awarded in those periods.

9(B). Provide the total number of all sub contracts assisted with DOT funds that were awarded or committed during this reporting period.

9(C). From the total dollar amount of sub contracts awarded/committed this period in item 9(A), provide the total dollar amount awarded in sub contracts to DBEs.

9(D). From the total number of sub contracts awarded or committed in item 9(B), specify the number of sub contracts awarded or committed to DBEs.

9(E). From the total dollar amount of sub contracts awarded or committed to DBEs this period, provide the amount in dollars to DBEs using Race Conscious measures.

9(F). From the total number of sub contracts awarded orcommitted to DBEs this period, provide the number of sub contracts awarded or committed to DBEs using Race Conscious measures.

9(G). From the total dollar amount of sub contracts awarded/committed to DBEs this period, provide the amount in dollars to DBEs using Race Neutral measures.

9(H). From the total number of sub contracts awarded/committed to DBEs this period, provide the number of sub contracts awarded to DBEs using Race Neutral measures.

9(I). Of all subcontracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 9(C) by the dollar amount in item 9(A) to derive this percentage. Round percentage to the nearest tenth.

Line 10: Total contracts awarded or committed this period. These fields should be used to show the total dollar value and number of contracts awarded to DBEs and to calculate the overall percentage of dollars awarded to DBEs.

10(A)–10(B). These fields are unavailable for data entry.

10(C–H). Combine the total values listed on the prime contracts line (Line 8) with the corresponding values on the subcontracts line (Line 9).

10(I). Of all contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the total dollars awarded to DBEs in item 10(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

Section B: Breakdown by Ethnicity & Gender of Contracts Awarded to DBEs This Period

11–17. Further breakdown the contracting activity with DBE involvement. The Total Dollar Amount to DBEs in 17(C) should equal the Total Dollar Amount to DBEs in 10(C). Likewise the total number of contracts to DBEs in 17(F) should equal the Total Number of Contracts to DBEs in 10(D).

Line 16: The ''Non-Minority'' category is reserved for any firms whose owners are not members of the presumptively disadvantaged groups already listed, but who are either ''women'' OR eligible for the DBE program on an individual basis. All DBE firms must be certified by the Unified Certification Program to be counted in this report.

Section C: Payments on Ongoing Contracts

Line 18(A–E). Submit information on contracts that are currently in progress. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.

18(A). Provide the total dollar amount paid to all firms performing work on contracts.

18(B). Provide the total number of contracts where work was performed during the reporting period.

18(C). From the total number of contracts provided in 18(A) provide the total number of contracts that are currently being performed by DBE firms for which payments have been made.

18(D). From the total dollar amount paid to all firms in 18(A), provide the total dollar value paid to DBE firms currently performing work during this period.

18(E). Provide the total number of DBE firms that received payment during this reporting period. For example, while 3 contracts may be active during this period, one DBE firm may be providing supplies or services on all three contracts. This field should only list the number of DBE firms performing work.

18(F). Of all payments made during this period, calculate the percentage going to DBEs. Divide the total dollar value to DBEs in item 18(D) by the total dollars of all payments in 18(B). Round percentage to the nearest tenth.

Section D: Actual Payments on Contracts Completed This Reporting Period

This section should provide information only on contracts that are closed during this period. All dollar amounts are to reflect the entire Federal share of such contracts, and should be rounded to the nearest dollar.

19(A). Provide the total number of contracts completed during this reporting period that used Race Conscious measures. Race Conscious contracts are those with contract goals or another race conscious measure.

19(B). Provide the total dollar value of prime contracts completed this reporting period that had race conscious measures.

19(C). From the total dollar value of prime contracts completed this period in 19(B), provide the total dollar amount of dollars awarded or committed to DBE firms in order to meet the contract goals. This applies only to Race Conscious contracts.

19(D). Provide the actual total DBE participation in dollars on the race conscious contracts completed this reporting period.

19(E). Of all the contracts completed this reporting period using Race Conscious measures, calculate the percentage of DBE participation. Divide the total dollar amount to DBEs in item 19(D) by the total dollar value provided in 19(B) to derive this percentage. Round to the nearest tenth.

20(A)–20(E). Items 21(A)–21(E) are derived in the same manner as items 19(A)–19(E), except these figures should be based on contracts completed using Race Neutral measures.

20(C). This field is closed.

21(A)–21(D). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.

21(C). This field is closed.

21(E). Calculate the overall percentage of dollars to DBEs on completed contracts. Divide the Total DBE participation dollar value in 21(D) by the Total Dollar Value of Contracts Completed in 21(B) to derive this percentage. Round to the nearest tenth.

23. Name of the Authorized Representative preparing this form.

24. Signature of the Authorized Representative.

25. Phone number of the Authorized Representative.

**Submit your completed report to your Regional or Division Office.

BILLING CODE 4910–9X–P

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS

****Please refer to the Instructions sheet for directions on filling out this form****

1	Submitted to (check only one):	[ ] FHWA	[ ] FAA	[ ] FTA–Recipient ID Number			
2	AIP Numbers (FAA Recipients); Grant Number (FTA Recipients):						
3	Federal fiscal year in which reporting period falls:			4. Date This Report Submitted:			
5	Reporting Period	[ ] Report due June 1 (for period Oct. 1-Mar. 31)		[ ] Report due Dec. 1 (for period April 1-Sept. 30)		[ ] FAA annual report due Dec. 1	
6	Name and address of Recipient:						
7	Annual DBE Goal(s):	Race Conscious Projection		Race Neutral Projection		OVERALL Goal	

Awards/Commitments this Reporting Period

		A	B	C	D	E	F	G	H	I
A	AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (total contracts and subcontracts committed during this reporting period)	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs /Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
8	Prime contracts awarded this period									
9	Subcontracts awarded/committed this period									
10	TOTAL									

		Contracts Awarded to DBEs this Period					
B	BREAKDOWN BY ETHNICITY & GENDER	A	B	C	D	E	F
		Total to DBE (dollar amount)			Total to DBE (number)		
		Women	Men	Total	Women	Men	Total
11	Black American						
12	Hispanic American						
13	Native American						
14	Asian-Pacific American						
15	Sub-continent Asian Americans						
16	Non-Minority						
17	TOTAL						

Payments Made this Period

		A	B	C	D	E	F
C	PAYMENTS ON ONGOING CONTRACTS (report activity of ongoing contracts)	Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid	Percent to DBEs
18	Prime and sub contracts currently in progress						

		A	B	C	D	
D	TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percent to DBEs
19	Race Conscious					
20	Race Neutral					
21	Totals					

22	Submitted By:	24. Signature:	25. Phone Number:

■ 25. Revise appendix F to part 26 to read as follows:

Appendix F

UNIFORM CERTIFICATION APPLICATION

DISADVANTAGED BUSINESS ENTERPRISE (DBE) / AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

49 C.F.R. Parts 23 and 26

Roadmap for Applicants

1. Should I apply?

You may be eligible to participate in the DBE/ACDBE program if:

- The firm is a for-profit business that performs or seeks to perform transportation related work (or a concession activity) for a recipient of Federal Transit Administration, Federal Highway Administration, or Federal Aviation Administration funds.
- The firm is at least 51% owned by a socially and economically disadvantaged individual(s) who also controls it.
- The firm's disadvantaged owners are U.S. citizens or lawfully admitted permanent residents of the U.S.
- The firm meets the Small Business Administration's size standard and does not exceed $23.98 million in gross annual receipts for DBE ($52.47 million for ACDBEs). (Other size standards apply for ACDBE that are banks/financial institutions, car rental companies, pay telephone firms, and automobile dealers.)

2. How do I apply?

First time applicants for DBE certification must complete and submit this certification application and related material to the certifying agency in your home state and participate in an on-site interview conducted by that agency. The attached document checklist can help you locate the items you need to submit to the agency with your completed application. If you fail to submit the required documents, your application may be delayed and/or denied. Firms already certified as a DBE do not have to complete this form, but may be asked by certifying agencies outside of your home state to provide a copy of your initial application form, supporting documents, and any other information you submitted to your home state to obtain certification or to any other state related to your certification.

3. Where can I send my application? INSERT UCP PARTICIPATING MEMBER CONTACT INFORMATION]

4. Who will contact me about my application and what are the eligibility standards?

The DBE and ACDBE Programs require that all U.S. Department of Transportation (DOT) recipients of federal assistance participate in a statewide Unified Certification Program (UCP). The UCP is a one-stop certification program that eliminates the need for your firm to obtain certification from multiple certifying agencies within your state. The UCP is responsible for certifying firms and maintaining a database of certified DBEs and ACDBEs for DOT grantees, pursuant to the eligibility standards found in 49 C.F.R. Parts 23 and 26.

5. Where can I find more information?

U.S. DOT—https://www.civilrights.dot.gov/ (This site provides useful links to the rules and regulations governing the DBE/ACDBE program, questions and answers, and other pertinent information)

SBA—Small Business Size Standards matched to the North American Industry Classification System (NAICS): http://www.census.gov/eos/www/naics/ and http://www.sba.gov/content/table-small-business-size-standards.

In collecting the information requested by this form, the Department of Transportation (Department) complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Department's Disadvantaged Business Enterprise Program as defined in 49 CFR §26.5 and the Airport Concession Disadvantaged Business Enterprise Program as defined in 49 CFR §23.3. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

Under 49 C.F.R. §26.107, dated February 2, 1999 and January 28, 2011, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 2 CFR Parts 180 and 1200, Nonprocurement Suspension and Department, take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) UNIFORM CERTIFICATION APPLICATION

NOTE: All participating firms must be for-profit enterprises. If your firm is not for profit, then you do NOT qualify for the DBE/ACDBE program and should not complete this application. If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information

(1) Enter the contact name and title of the person completing this application and the person who will serve as your firm's contact for this application.
(2) Enter the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
(3) Enter the primary phone number of your firm.
(4) Enter a secondary phone number, if any.
(5) Enter your firm's fax number, if any.
(6) Enter the contact person's email address.
(7) Enter your firm's website addresses, if any.
(8) Enter the street address of the firm where its offices are physically located (not a P.O. Box).
(9) Enter the mailing address of your firm, if it is different from your firm's street address.

B. Prior/Other Certifications and Applications

(10) Check the appropriate box indicating whether your firm is currently certified in the DBE/ACDBE programs, and provide the name of the certifying agency that certified your firm. List the dates of any site visits conducted by your home state and any other states or UCP members. Also provide the names of state/UCP members that conducted the review.
(11) Indicate whether your firm or any of the persons listed has ever been denied certification as a DBE, 8(a), or Small Disadvantaged Business (SDB) firm, or state and local MBE/WBE firm. Indicate if the firm has ever been decertified from one of these programs. Indicate if the application was withdrawn or whether the firm was debarred, suspended, or otherwise had its bidding privileges denied or restricted by any state or local agency, or Federal entity. If your answer is yes, identify the name of the agency, and explain fully the nature of the action in the space provided. Indicate if you have ever appealed this decision to the Department and if so, attach a copy of USDOT's final agency decision(s).

Section 2: GENERAL INFORMATION

A. Business profile:

(1) Give a concise description of the firm's primary activities, the product(s) or services the company provides, or type of construction. If your company offers more than one product/service, list primary product or service first (attach additional sheets if necessary). This description may be used in our UCP online directory if you are certified as a DBE.
(2) If you know the appropriate NAICS Code for the line(s) of work you identified in your business profile, enter the codes in the space provided.
(3) State the date on which your firm was established as stated in your firm's Articles of Incorporation or charter.
(4) State the date each person became a firm owner.
(5) Check the appropriate box describing the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
(6) Check the appropriate box that indicates whether your firm is "for profit." **If you checked "No," then you do NOT qualify for the DBE/ACDBE program** and should not complete this application. All participating firms must be for-profit enterprises. If the firm is a for profit enterprise, provide the Federal Tax ID number as stated on your firm's Federal tax return.
(7) Check the appropriate box that describes the type of legal business structure of your firm, as indicated in your firm's Articles of Incorporation or similar document. Identify all joint venture partners if applicable. If you checked "Other," briefly explain in the space provided.
(8) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time, part-time, and seasonal basis. Attach a list of employees, their job titles, and dates of employment, to your application.
(9) Specify the firm's gross receipts for each of the past three years, as stated in your firm's filed Federal tax returns. You must submit complete copies of the firm's Federal tax returns for each year. If there are any affiliates or subsidiaries of the applicant firm or owners, you must provide these firms' gross receipts and submit complete copies of these firm(s) Federal tax returns. Affiliation is defined in 49 C.F.R. §26.5 and 13 C.F.R. Part 121.

B. Relationships and Dealings with Other Businesses

(1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, financing, or any office staff and/or employees with any other business, organization or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and fully explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or

oral agreement. Provide an explanation of any items shared with other firms in the space provided.

(2) Check the appropriate box indicating whether any other firm currently has or had an ownership interest in your firm at present or at any time in the past. If you checked yes, please explain.

(3) Check the appropriate box that indicates whether at present or at any time in the past your firm:

(a) ever existed under different ownership, a different type of ownership, or a different name;

(b) existed as a subsidiary of any other firm;

(c) existed as a partnership in which one or more of the partners are/were other firms;

(d) owned any percentage of any other firm; and

(e) had any subsidiaries of its own.

(f) served as a subcontractor with another firm constituting more than 25% of your firm's receipts.

If you answered "Yes" to any of the questions in (3)(a-f), you may be asked to explain the arrangement in detail.

Section 3: MAJORITY OWNER INFORMATION

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each owner):

A. Identify the majority owner of the firm holding 51% or more ownership interest

(1) Enter the full name of the owner.

(2) Enter his/her title or position within your firm.

(3) Give his/her home phone number.

(4) Enter his/her home (street) address.

(5) Indicate this owner's gender.

(6) Identify the owner's ethnic group membership. If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.

(7) Check the appropriate box to indicate whether this owner is a U.S. citizen or a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner.

(8) Enter the number of years during which this owner has been an owner of your firm.

(9) Indicate the percentage of the total ownership this person holds and the date acquired, including (if appropriate), the class of stock owned.

(10) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment. Describe how you acquired your business and attach documentation substantiating this investment.

B. Additional Owner Information

(1) Describe the familial relationship of this owner to each other owner of your firm and employees.

(2) Indicate whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function/title held in that business.

(3) (a) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has <u>any</u> relationship with your firm. If you checked "Yes," identify the name of the other business, the nature of the business relationship, and the owner's function at the firm.

(b) If the owner works for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week, please identify this activity.

(4) (a) Provide the personal net worth of the owner applying for certification in the space provided. Complete and attach the accompanying "Personal Net Worth Statement for DBE/ACDBE Program Eligibility" with your application. Note, complete this section and accompanying statement only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged).

(b) Check the appropriate box that indicates whether any trust has been created for the benefit of the disadvantaged owner(s). If you answered "Yes," you may be asked to provide a copy of the trust instrument.

(5) Check the appropriate to indicate whether any of your immediate family members, managers, or employees, own, manage, or are associated with another company. Immediate family member is defined in 49 C.F.R. §26.5. If you answered "Yes," provide the name of each person, your relationship to them, the name of the company, the type of business, and whether they own or manage the company.

Section 4: CONTROL

A. Identify the firm's Officers and Board of Directors

(1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer.

(2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.

(3) Check the appropriate box to indicate whether any of your firm's officers and/or directors listed above performs a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.

(4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. (e.g., ownership interest, shared office space, financial investments, equipment leases, personnel sharing, etc.) If you answered "Yes," identify the name of the firm, the individual's name, and the nature of his/her business relationship with that other firm.

B. Duties of Owners, Officers, Directors, Managers and Key Personnel

(1), (2) Specify the roles of the majority and minority owners, directors, officers, and managers, and key personnel who control the functions listed for the business. Submit résumés for each owner and non-owner identified below. State the name of the individual, title, race and gender and percentage ownership if any. Circle the frequency of each person's involvement as follows: "always, frequently, seldom, or never" in each area.

Indicate whether any of the persons listed in this section perform a management or supervisory function for any other business. Identify the person, business, and their title/function. Identify if any of the persons listed above own or work for any other firm(s) that has a relationship with this firm (e.g. ownership interest, shared office space, financial investment, equipment, leases, personnel sharing, etc.) If you answered "Yes," describe the nature of his/her business relationship with that other firm.

C. Inventory: Indicate firm inventory in these categories:

(1) Equipment and Vehicles
State the make and model, and current dollar value of each piece of equipment and motor vehicle held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm or owner, whether it is used as collateral, and where this item is stored.

(2) Office Space
State the street address of each office space held and/or used by your firm. Indicate whether your firm or owner owns or leases the office space and the current dollar value of that property or its lease.

(3) Storage Space
State the street address of each storage space held and/or used by your firm. Indicate whether your firm or owner owns or leases the storage space and the current dollar value of that property or its lease. Provide a signed lease agreement for each property.

D. Does your firm rely on any other firm for management functions or employee payroll?

Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," you may be asked to explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. Financial / Banking Information

Banking Information. State the name, City and State of your firm's bank. In the space provided, identify the persons able to sign checks on this account. Provide bank authorization and signature cards

Bonding Information. State your firm's bonding limits (in dollars), specifying both the aggregate and project limits.

F. Sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms guaranteeing the loan.

State the name and address of each source, the name of person securing the loan, original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm. Provide copies of signed loan agreements and security agreements

G. Contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years:

Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. Current licenses/permits held by any owner or employee of your firm.

List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and issuing State of the license or permit. Attach copies of licenses, license renewal forms, permits, and haul authority forms.

I. Largest contracts completed by your firm in the past three years, if any.

List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. Largest active jobs on which your firm is currently working.

For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

AIRPORT CONCESSION (ACDBE) APPLICANTS

Identify the concession space, address and location at the airport, the value of the property or lease, and fees/lease payments paid to the airport. Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of the concession enterprise.

AFFIDAVIT & SIGNATURE

The Affidavit of Certification must accompany your application for certification. Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information

(1) Contact person and Title: _____ **(2) Legal name of firm:** _____

(3) Phone #: (___) _____ - _____ **(4) Other Phone #:** (___) _____ - _____ **(5) Fax #:** (___) _____ - _____

(6) E-mail: _____ **(7) Firm Websites:** _____

(8) Street address of firm *(No P.O. Box)*: **City:** **County/Parish:** **State:** **Zip:**

(9) Mailing address of firm *(if different)*: **City:** **County/Parish:** **State:** **Zip:**

B. Prior/Other Certifications and Applications

(10) Is your firm currently certified for any of the following U.S. DOT programs?
❑ DBE ❑ ACDBE Names of certifying agencies: _____

⊗ If you are certified in your home state as a DBE/ACDBE, you do not have to complete this application for other states. Ask your state UCP about the interstate certification process.

List the dates of any site visits conducted by your home state and any other states or UCP members:

Date ___/___/___ State/UCP Member: _____ Date ___/___/___ State/UCP Member: _____

(11) Indicate whether the firm or any persons listed in this application have ever been:

(a) Denied certification or decertified as a DBE, ACDBE, 8(a), SDB, MBE/WBE firm? ❑ Yes ❑No
(b) Withdrawn an application for these programs, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? ❑ Yes ❑ No

If yes, explain the nature of the action. *(If you appealed the decision to DOT or another agency, attach a copy of the decision,*

Section 2: GENERAL INFORMATION

A. Business Profile: (1) Give a concise description of the firm's primary activities and the product(s) or service(s) it provides. If your company offers more than one product/service, list the primary product or service first. Please use additional paper if necessary. This description may be used in our database and the UCP online directory if you are certified as a DBE or ACDBE.

(2) Applicable NAICS Codes for this line of work include: _____ _____ _____ _____ _____ _____

(3) This firm was established on ____/____/____ **(4) I/We have owned this firm since:** ____/____/____

(5) Method of acquisition *(Check all that apply)*:
❑ Started new business ❑ Bought existing business ❑ Inherited business ❑ Secured concession
❑ Merger or consolidation ❑ Other *(explain)* _____

(6) Is your firm "for profit"? ❑ Yes ❑No→ ⊗ **STOP!** If your firm is NOT for-profit, then you do NOT qualify for this program and should not fill out this application.
Federal Tax ID# _____

(7) Type of Legal Business Structure: *(check all that apply)*:

❑ Sole Proprietorship ❑ Limited Liability Partnership
❑ Partnership ❑Corporation
❑ Limited Liability Company ❑ Joint Venture (Identify all JV partners _____)
❑ Applying as an ACDBE ❑ Other, Describe _____

(8) Number of employees: Full-time _____ Part-time _____ Seasonal _____Total _____
(Provide a list of employees, their job titles, and dates of employment, to your application).

(9) Specify the firm's gross receipts for the last 3 years. *(Submit complete copies of the firm's Federal tax returns for each year. If there are affiliates or subsidiaries of the applicant firm or owners, you must submit complete copies of these firms' Federal tax returns).*

Year _____ Gross Receipts of Applicant Firm $ _____ Gross Receipts of Affiliate Firms $_____
Year _____ Gross Receipts of Applicant Firm $_____Gross Receipts of Affiliate Firms $_____
Year _____ Gross Receipts of Applicant Firm $ _____ Gross Receipts of Affiliate Firms $_____

B. Relationships and Dealings with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office or storage space, yard, warehouse, facilities, equipment, inventory, financing, office staff, and/or employees with any other business, organization, or entity? ❑ Yes ❑ No
If Yes, explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or oral agreement. Also detail the items shared.

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

(2) Has any other firm had an ownership interest in your firm at present or at any time in the past?
❑ Yes ❑ No If Yes, explain_____

(3) At present, or at any time in the past, has your firm:

(a) Ever existed under different ownership, a different type of ownership, or a different name? ❑ Yes ❑ No
(b) Existed as a subsidiary of any other firm? ❑ Yes ❑ No
(c) Existed as a partnership in which one or more of the partners are/were other firms? ❑ Yes ❑ No
(d) Owned any percentage of any other firm? ❑ Yes ❑ No
(e) Had any subsidiaries? ❑ Yes ❑ No
(f) Served as a subcontractor with another firm constituting more than 25% of your firm's receipts? ❑ Yes ❑ No

(If you answered "Yes" to any of the questions in (2) and/or (3)(a)-(f), you may be asked to provide further details and explain whether the arrangement continues).

Section 3: MAJORITY OWNER INFORMATION

A. Identify the majority owner of the firm holding 51% or more ownership interest.

(1) Full Name: _____ | **(2) Title:** _____ | **(3) Home Phone #:** ( ) _____ - _____

(4) Home Address (*Street and Number*): _____ | **City:** _____ | **State:** _____ | **Zip:** _____ - _____

(5) Gender: ❑ Male ❑ Female

(6) Ethnic group membership *(Check all that apply)*:

❑ Black ❑ Hispanic
❑ Asian Pacific ❑ Native American
❑ Subcontinent Asian
❑ Other (*specify*) _____

(7) U.S. Citizenship:

❑ U.S. Citizen
❑ Lawfully Admitted Permanent Resident

(8) Number of years as owner: _____
(9) Percentage owned: _____ %
Class of stock owned: _____
Date acquired _____

(10) Initial investment to acquire ownership interest in firm:

Type	Dollar Value
Cash	$
Real Estate	$
Equipment	$
Other	$

Describe how you acquired your business:
❑ Started business myself
❑ It was a gift from: _____
❑ I bought it from: _____
❑ I inherited it from: _____
❑ Other _____
(Attach documentation substantiating your investment)

B. Additional Owner Information
(1) Describe familial relationship to other owners and employees:
_____
_____
_____

(2) Does this owner perform a management or supervisory function for any other business? ❑ Yes ❑ No
If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*) ❑ Yes ❑ No
Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:
_____
_____

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification ? $_____

(b)Has any trust been created for the benefit of this disadvantaged owner(s)? ❑ Yes ❑ No
(If Yes, you may be asked to provide a copy of the trust instrument).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ❑ Yes ❑ No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage the company: *(Please attach extra sheets, if needed)*: _____
_____

Section 3: OWNER INFORMATION, Cont'd.

A. Identify all individuals, firms, or holding companies that hold LESS THAN 51% ownership interest in the firm (*Attach separate sheets for each additional owner*)

(1) Full Name: _____ | **(2) Title:** _____ | **(3) Home Phone #:** ( ) _____ - _____

(4) Home Address (*Street and Number*): _____ | **City:** _____ | **State:** _____ | **Zip:** _____ - _____

(5) Gender: ❑ Male ❑ Female

(6) Ethnic group membership (*Check all that apply*)

❑ Black ❑ Hispanic
❑ Asian Pacific ❑ Native American
❑ Subcontinent Asian
❑ Other (*specify*) _____

(7) U.S. Citizenship:

❑ U.S. Citizen
❑ Lawfully Admitted Permanent Resident

(8) Number of years as owner: _____
(9) Percentage owned: _____ %
Class of stock owned: _____
Date acquired _____

(10) Initial investment to acquire ownership interest in firm:

Type	Dollar Value
Cash	$
Real Estate	$
Equipment	$
Other	$

Describe how you acquired your business:
❑ Started business myself
❑ It was a gift from: _____
❑ I bought it from: _____
❑ I inherited it from: _____
❑ Other _____
(*Attach documentation substantiating your investment*)

B. Additional Owner Information
(1) Describe familial relationship to other owners and employees:
_____
_____
_____

(2) Does this owner perform a management or supervisory function for any other business? ❑ Yes ❑ No
If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*) ❑ Yes ❑ No
Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:
_____

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? $_____

(b)Has any trust been created for the benefit of this disadvantaged owner(s)? ❑ Yes ❑ No
(*If Yes, you may be asked to provide a copy of the trust instrument*).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ❑ Yes ❑ No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage: (*Please attach extra sheets, if needed*): _____
_____

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors *(If additional space is required, attach a separate sheet)*:

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				

(3) Do any of the persons listed above perform a management or supervisory function for any other business?
❑ Yes ❑ No If Yes, identify for each:

Person: _____ Title: _____
Business: _____ Function: _____

Person: _____ Title: _____
Business: _____ Function: _____

(4) Do any of the persons listed in section A above own or work for any other firm(s) that has a relationship with this firm? *(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)*
❑ Yes ❑ No If Yes, identify for each:

Firm Name: _____ Person: _____
Nature of Business Relationship: _____

B. Duties of Owners, Officers, Directors, Managers, and Key Personnel

1. *(Identify your firm's management personnel who control your firm in the following areas (Attach separate sheets as needed).*

A= Always **F = Frequently**	**S = Seldom** **N = Never**	Majority Owner (51% or more) Name: _____ Title: _____ Percent Owned: _____				Minority Owner (49% or less) Name: _____ Title: _____ Percent Owned: _____			
Sets policy for company direction/scope of operations		A	F	S	N	A	F	S	N
Bidding and estimating		A	F	S	N	A	F	S	N
Major purchasing decisions		A	F	S	N	A	F	S	N
Marketing and sales		A	F	S	N	A	F	S	N
Supervises field operations		A	F	S	N	A	F	S	N
Attend bid opening and lettings		A	F	S	N	A	F	S	N
Perform office management (billing, accounts receivable/payable, etc.)		A	F	S	N	A	F	S	N
Hires and fires management staff		A	F	S	N	A	F	S	N
Hire and fire field staff or crew		A	F	S	N	A	F	S	N
Designates profits spending or investment		A	F	S	N	A	F	S	N
Obligates business by contract/credit		A	F	S	N	A	F	S	N
Purchase equipment		A	F	S	N	A	F	S	N
Signs business checks		A	F	S	N	A	F	S	N

2. Complete for all Officers, Directors, Managers, and Key Personnel who control the following functions for the firm. *(Attach separate sheets as needed).*

A= Always S = Seldom F = Frequently N = Never	Officer/Director/Manager/Key Personnel Name: _____ Title: _____ Race and Gender: _____ Percent Owned: _____				Officer/Director/Manager/ Key Personnel Name: _____ Title: _____ Race and Gender: _____ Percent Owned: _____			
Sets policy for company direction/scope of operations	A	F	S	N	A	F	S	N
Bidding and estimating	A	F	S	N	A	F	S	N
Major purchasing decisions	A	F	S	N	A	F	S	N
Marketing and sales	A	F	S	N	A	F	S	N
Supervises field operations	A	F	S	N	A	F	S	N
Attend bid opening and lettings	A	F	S	N	A	F	S	N
Perform office management (billing, accounts receivable/payable, etc.)	A	F	S	N	A	F	S	N
Hires and fires management staff	A	F	S	N	A	F	S	N
Hire and fire field staff or crew	A	F	S	N	A	F	S	N
Designates profits spending or investment	A	F	S	N	A	F	S	N
Obligates business by contract/credit	A	F	S	N	A	F	S	N
Purchase equipment	A	F	S	N	A	F	S	N
Signs business checks	A	F	S	N	A	F	S	N

Do any of the persons listed in B1 or B2 perform a management or supervisory function for any other business? If Yes, identify the person, the business, and their title/function: _____

_____

Do any of the persons listed above own or work for any other firm(s) that has a relationship with this firm? (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*) If Yes, describe the nature of the business relationship: _____

_____

C. Inventory: Indicate your firm's inventory in the following categories *(Please attach additional sheets if needed):*

1. Equipment and Vehicles

	Make and Model	**Current Value**	**Owned or Leased by Firm or Owner?**	**Used as collateral?**	**Where is item stored?**
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					

2. Office Space

Street Address	**Owned or Leased by Firm or Owner?**	**Current Value of Property or Lease**

3. Storage Space *(Provide signed lease agreements for the properties listed)*

Street Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease

D. Does your firm rely on any other firm for management functions or employee payroll? ❑ Yes ❑ No

E. Financial/Banking Information *(Provide bank authorization and signature cards)*

Name of bank: _____ City and State: _____
The following individuals are able to sign checks on this account: _____

Name of bank: _____ City and State: _____
The following individuals are able to sign checks on this account: _____

Bonding Information: If you have bonding capacity, identify the firm's bonding aggregate and project limits:
Aggregate limit $ _____ Project limit $ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm including from financial institutions. Identify whether you the owner and any other person or firm loaned money to the applicant DBE/ACDBE. Include the names of any persons or firms guaranteeing the loan, if other than the listed owner. (*Provide copies of signed loan agreements and security agreements).*

	Name of Source	Address of Source	Name of Person Guaranteeing the Loan	Original Amount	Current Balance	Purpose of Loan
1.						
2.						
3.						

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years (*Attach additional sheets if needed*):

	Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.						
2.						
3.						

H. List current licenses/permits held by any owner and/or employee of your firm
(*e.g. contractor, engineer, architect, etc.)(Attach additional sheets if needed)*:

	Name of License/Permit Holder	Type of License/Permit	Expiration Date	State
1.				
2.				
3.				

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

AIRPORT CONCESSION (ACDBE) APPLICANTS ONLY MUST COMPLETE THIS SECTION

Identify the following information concerning the ACDBE applicant firm:

Concession Space	Address / Location at Airport	Value of Property or Lease	Fees/Lease Payments Paid to the Airport

Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession

Name of Concession	Location	Type of Concession	Start Date of Concession

AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed), swear or affirm under penalty of law that I am _____(title) of the applicant firm _____ and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its places(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract, subcontract, concession lease or sublease, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership changes, address/telephone number, personal net worth exceeding $1.32 million, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise or Airport Concession Disadvantaged Business Enterprise. In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s): (Check all that apply):

❑ Female ❑ Black American ❑ Hispanic American
❑ Native American ❑ Asian-Pacific American
❑ Subcontinent Asian American ❑ Other (specify)
_____

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed $1.32 million, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Signature _____ _____
(DBE/ACDBE Applicant) (Date)

NOTARY CERTIFICATE

UNIFORM CERTIFICATION APPLICATION
SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE or ACDBE certification, you must attach copies of all of the following REQUIRED documents. A failure to supply any information requested by the UCP may result in your firm denied DBE/ACDBE certification.

Required Documents for All Applicants

☐ Résumés (that include places of employment with corresponding dates), for all owners, officers, and key personnel of the applicant firm
☐ Personal Net Worth Statement for each socially and economically disadvantaged owners comprising 51% or more of the ownership percentage of the applicant firm.
☐ Personal Federal tax returns for the past 3 years, if applicable, for each disadvantaged owner
☐ Federal tax returns (and requests for extensions) filed by the firm and its affiliates with related schedules, for the past 3 years.
☐ Documented proof of contributions used to acquire ownership for each owner (*e.g., both sides of cancelled checks*)
☐ Signed loan and security agreements, and bonding forms
☐ List of equipment and/or vehicles owned and leased including VIN numbers, copy of titles, proof of ownership, insurance cards for each vehicle.
☐ Title(s), registration certificate(s), and U.S. DOT numbers for each truck owned or operated by your firm
☐ Licenses, license renewal forms, permits, and haul authority forms
☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past 2 years
☐ DBE/ACDBE and SBA 8(a), SDB, MBE/WBE certifications, denials, and/or decertifications, if applicable; and any U.S. DOT appeal decisions on these actions.
☐ Bank authorization and signatory cards
☐ Schedule of salaries (or other remuneration) paid to all officers, managers, owners, and/or directors of the firm
☐ List of all employees, job titles, and dates of employment.
☐ Proof of warehouse/storage facility ownership or lease arrangements

Partnership or Joint Venture
☐ Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC
☐ Official Articles of Incorporation (*signed by the state official*)
☐ Both sides of all corporate stock certificates and your firm's stock transfer ledger
☐ Shareholders' Agreement(s)
☐ Minutes of all stockholders and board of directors meetings
☐ Corporate by-laws and any amendments
☐ Corporate bank resolution and bank signature cards
☐ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Optional Documents to Be Provided on Request

The UCP to which you are applying may require the submission of the following documents. If requested to provide these document, you must supply them with your application or at the on-site visit.

☐ Proof of citizenship
☐ Insurance agreements for each truck owned or operated by your firm
☐ Audited financial statements (if available)
☐ Personal Federal Tax returns for the past 3 years, if applicable, for other disadvantaged owners of the firm.
☐ Trust agreements held by any owner claiming disadvantaged status
☐ Year-end balance sheets and income statements for the past 3 years (*or life of firm, if less than three years*)

Suppliers
☐ List of product lines carried and list of distribution equipment owned and/or leased

U.S. DOT Uniform DBE/ACDBE Certification Application • Page 14 of 14

■ 26. Add appendix G to part 26 to read as follows:

Appendix G to Part 26—Personal Net Worth Statement

U.S. Department of Transportation

Personal Net Worth Statement
For DBE/ACDBE Program Eligibility

As of _____

OMB APPROVAL NO:
EXPIRATION DATE:

This form is used by all participants in the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) Programs. Each individual owner of a firm applying to participate as a DBE or ACDBE, whose ownership and control are relied upon for DBE certification must complete this form. Each person signing this form authorizes the Unified Certification Program (UCP) recipient to make inquiries as necessary to verify the accuracy of the statements made. The agency you apply to will use the information provided to determine whether an owner is economically disadvantaged as defined in the DBE program regulations 49 C.F.R. Parts 23 and 26. **Return form to appropriate UCP certifying member, not U.S. DOT.**

Name		Business Phone
Residence Address (As reported to the IRS) City, State and Zip Code		Residence Phone
Business Name of Applicant Firm		
Spouse's Full Name (Marital Status: Single, Married, Divorced, Union)		

ASSETS	(Omit Cents)	**LIABILITIES**	(Omit Cents)
Cash and Cash Equivalents	$	Loan on Life Insurance (Complete Section 5)	$
Retirement Accounts (IRAs, 401Ks, 403Bs, Pensions, etc.) (Report full value minus tax and interest penalties that would apply if assets were distributed today) (Complete Section 3)	$	Mortgages on Real Estate Excluding Primary Residence Debt (Complete Section 4)	$
Brokerage, Investment Accounts	$	Notes, Obligations on Personal Property (Complete Section 6)	$
Assets Held in Trust	$	Notes & Accounts Payable to Banks and Others (Complete Section 2)	$
Loans to Shareholders & Other Receivables (Complete section 6)	$	Other Liabilities (Complete Section 8)	$
Real Estate Excluding Primary Residence (Complete Section 4)	$	Unpaid Taxes (Complete Section 8)	$
Life Insurance (Cash Surrender Value Only) (Complete Section 5)	$		
Other Personal Property and Assets (Complete Section 6)	$		
Business Interests Other Than the Applicant Firm (Complete Section 7)	$		
Total Assets	$	Total Liabilities	$
		NET WORTH	

Section 2. Notes Payable to Banks and Others

Name of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

Section 3. Brokerage and custodial accounts, stocks, bonds, retirement accounts. (Full Value) (Use attachments if necessary).

Name of Security / Brokerage Account / Retirement Account	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned (Including Primary Residence, Investment Properties, Personal Property Leased or Rented for Business Purposes, Farm Properties, or any Other Income Producing property). (List each parcel separately. Add additional sheets if necessary).

	Primary Residence	Property B	Property C
Type of Property			
Address			
Date Acquired and Method of Acquisition (purchase, inherit, divorce, gift, etc.)			
Names on Deed			
Purchase Price			
Present Market Value			
Source of Market Valuation			
Name of all Mortgage Holders			
Mortgage Acc. # and balance (as of date of form)			
Equity line of credit balance			
Amount of Payment Per Month/Year (Specify)			

Section 5. Life Insurance Held (Give face amount and cash surrender value of policies, name of insurance company and beneficiaries).

Insurance Company	Face Value	Cash Surrender Amount	Beneficiaries	Loan on Policy Information

Section 6. Other Personal Property and Assets (Use attachments as necessary)

Type of Property or Asset	Total Present Value	Amount of Liability (Balance)	Is this asset insured?	Lien or Note amount and Terms of Payment
Automobiles and Vehicles (including recreation vehicles, motorcycles, boats, etc.) Include personally owned vehicles that are leased or rented to businesses or other individuals.				
Household Goods / Jewelry				
Other (List)				
Accounts and Notes Receivables				

Section 7. Value of Other Business Investments, Other Businesses Owned (excluding applicant firm)
Sole Proprietorships, General Partners, Joint Ventures, Limited Liability Companies, Closely-held and Public Traded Corporations

Section 8. Other Liabilities and Unpaid Taxes (Describe)

Section 9. Transfer of Assets: Have you within 2 years of this personal net worth statement, transferred assets to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust? Yes ☐ No ☐ If yes, describe.

I declare under penalty of perjury that the information provided in this personal net worth statement and supporting documents is complete, true and correct. I certify that no assets have been transferred to any beneficiary for less than fair market value in the last two years. I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application and this personal net worth statement, and I authorize such agency to contact any entity named in the application or this personal financial statement, including the names banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility. I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

NOTARY CERTIFICATE:
(Insert applicable state acknowledgment, affirmation, or oath)

Signature (DBE/ACDBE Owner) Date

In collecting the information requested by this form, the Department of Transportation complies with Federal Freedom of Information and Privacy Act (5 U.S.C. 552 and 552a) provisions. The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Disadvantaged Business Enterprise (DBE) Program or Airport Concessionaire DBE Programs as defined in 49 C.F.R. Parts 23 and 26. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

General Instructions for Completing the Personal Net Worth Statement for DBE/ACDBE Program Eligibility

Please do not make adjustments to your figures pursuant to U.S. DOT regulations 49 C.F.R. Parts 23 and 26. The agency that you apply to will use the information provided on your completed Personal Net Worth (PNW) Statement to determine whether you meet the economic disadvantage requirements of 49 C.F.R. Parts 23 and 26. If there are discrepancies or questions regarding your form, it may be returned to you to correct and complete again.

An individual's personal net worth according to 49 C.F.R. Parts 23 and 26 includes only his or her own share of assets held separately, jointly, or as community property with the individual's spouse and excludes the following:

- Individual's ownership interest in the applicant firm;
- Individual's equity in his or her primary residence;
- Tax and interest penalties that would accrue if retirement savings or investments (e.g., pension plans, Individual Retirement Accounts, 401(k) accounts, etc.) were distributed at the present time.

Indicate on the form, if any items are jointly owned. If the personal net worth of the majority owner(s) of the firm exceeds $1.32 million, as defined by 49 C.F.R. Parts 23 and 26, the firm is not eligible for DBE or ACDBE certification. If the personal net worth of the majority owner(s) exceeds the $1.32 million cap at any time after your firm is certified, the firm is no longer eligible for certification. Should that occur, it is your responsibility to contact your certifying agency in writing to advise that your firm no longer qualifies as a DBE or ACDBE. You must fill out all line items on the Personal Net Worth Statement.

If necessary, use additional sheets of paper to report all information and details. If you have any questions about completing this form, please contact one of the UCP certifying agencies.

Assets

All assets must be reported at their current fair market values as of the date of your statement. ***Assessor's assessed value for real estate, for example, is not acceptable.*** Assets held in a trust should be included.

Cash and Cash Equivalents: On page 1, enter the total amount of cash or cash equivalents in bank accounts, including checking, savings, money market, certificates of deposit held domestic or foreign. Provide copies of the bank statement.

Retirement Accounts, IRA, 401Ks, 403Bs, Pensions: On page 1, enter the full value minus tax and interest penalties that would apply if assets were distributed as of the date of the form. Describe the number of shares, name of securities, cost market value, date of quotation, and total value in section 3 on page 2.

Brokerage and Custodial Accounts, Stocks, Bonds, Retirement Accounts: Report total value on page 1, and on page 2, section 3, enter the name of the security, brokerage account, retirement account, etc.; the cost; market value of the asset; the date of quotation; and total value as of the date of the PNW statement.

Assets Held in Trust: Enter the total value of the assets held in trust on page 1, and provide the names of beneficiaries and trustees, and other information in Section 6 on page 3.

Loans to Shareholders and Other Receivables not listed: Enter amounts loaned to you from your firm, from any other business entity in which you hold an ownership interest, and other receivables not listed above. Complete Section 6 on page 3.

Real Estate: The total value of real estate excluding your primary residence should be listed on page 1. In section 4 on page 2, please list your primary residence in column 1, including the address, method of acquisition, date of acquired, names of deed, purchase price, present fair market value, source of market valuation, names of all mortgage holders, mortgage account number and balance, equity line of credit balance, and amount of payment. List this information for all real estate held. Please ensure that this section contains all real estate owned, including rental properties, vacation properties, commercial properties, personal property leased or rented for business purposes, farm properties and any other income producing properties, etc. Attach additional sheets if needed.

Life Insurance: On page 1, enter the cash surrender value of this asset. In section 5 on page 2, enter the name of the insurance company, the face value of the policy, cash surrender value, beneficiary names, and loans on the policy.

Other Personal Property and Assets: Enter the total value of personal property and assets you own on page 1. Personal property includes motor vehicles, boats, trailers, jewelry, furniture, household goods, collectibles, clothing, and personally owned vehicles that are leased or rented to businesses or other individuals. In section 6 on page 3, list these assets and enter the present value, the balance of any liabilities, whether the asset is insured, and lien or note information and terms of payments. For accounts and notes receivable, enter the total value of all monies owed to you personally, if any. This should include shareholder loans to the applicant firm, if those exist. If the asset is insured, you may be asked to provide a copy of the policy. You may also be asked to provide a copy of any liens or notes on the property.

Other Business Interests Other than Applicant Firm: On page 1, enter the total value of your other business investments (excluding the applicant firm). In section 7 on page 3, enter information concerning the businesses you

hold an ownership interest in, such as sole proprietorships, partnerships, joint ventures, corporations, or limited liability corporations (other than the applicant firm). Do not reduce the value of these entries by any loans from the outside firm to the DBE/ACDBE applicant business.

Liabilities

Mortgages on Real Estate: Enter the total balance on all mortgages payable on real estate on page 1.

Loans on Life Insurance: Enter the total value of all loans due on life insurance policies on page 1, and complete section 5 on page 2.

Notes & Accounts Payable to Bank and Others: On page 1, section 2, enter details concerning any liability, including name of noteholders, original and current balances, payment terms, and security/collateral information. The entries should include automobile installment accounts. This should not, however, include any mortgage balances as this information is captured in section 4. Do not include loans for your business or mortgages for your properties in this section. You may be asked to submit copy of note/security agreement, and the most recent account statement.

Other Liabilities: On page 1, enter the total value due on all other liabilities not listed in the previous entries. In section 8, page 3, report the name of the individual obligated, names of co-signers, description of the liability, the name of the entity owed, the date of the obligation, payment amounts and terms. Note: Do not include contingent liabilities in this section. Contingent liabilities are liabilities that belong to you only if an event(s) should occur. For example, if you have co-signed on a relative's loan, but you are not responsible for the debt until your relative defaults, that is a contingent liability. Contingent liabilities do not count toward your net worth until they become actual liabilities.

Unpaid Taxes: Enter the total amount of all taxes that are currently due, but are unpaid on page 1, and complete section 8 on page 3. Contingent tax liabilities or anticipated taxes for current year should not be included. Describe in detail the name of the individual obligated, names of co-signers, the type of unpaid tax, to whom the tax is payable, due date, amount, and to what property, if any, the tax lien attaches. If none, state "NONE." You must include documentation, such as tax liens, to support the amounts.

Transfers of Assets:

Transfers of Assets: If you checked the box indicating yes on page 3 in this category, provide details on all asset transfers (within 2 years of the date of this personal net worth statement) to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust. Include a description of the asset; names of individuals on the deed, title, note or other instrument indicating ownership rights; the names of individuals receiving the assets and their relation to the transferor; the date of the transfer; and the value or consideration received. Submit documentation requested on the form related to the transfer.

Affidavit

Be sure to sign and date the statement. The Personal Net Worth Statement must be notarized

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

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Paul D. Wellstone Muscular Dystrophy Community Assistance, Research and Education Amendments of 2014 (Sept. 26, 2014; 128 Stat. 1879)

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All Circuit Review Extension Act (Sept. 26, 2014; 128 Stat. 1894)

H.R. 4751/P.L. 113–171

To make technical corrections to Public Law 110-229 to reflect the renaming of the Bainbridge Island Japanese American Exclusion Memorial, and for other purposes. (Sept. 26, 2014; 128 Stat. 1895)

H.R. 4809/P.L. 113–172

To reauthorize the Defense Production Act, to improve the Defense Production Act Committee, and for other purposes. (Sept. 26, 2014; 128 Stat. 1896)

H.R. 5062/P.L. 113–173

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H.R. 5134/P.L. 113–174

To extend the National Advisory Committee on Institutional Quality and Integrity and the Advisory Committee on Student Financial Assistance for one year. (Sept. 26, 2014; 128 Stat. 1900)

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Department of Veterans Affairs Expiring Authorities Act of 2014 (Sept. 26, 2014; 128 Stat. 1901)

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Approving the location of a memorial to commemorate the more than 5,000 slaves and free Black persons who fought for independence in the American Revolution. (Sept. 26, 2014; 128 Stat. 1910)

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To reinstate and extend the deadline for commencement of construction of a hydroelectric project involving the American Falls Reservoir. (Sept. 26, 2014; 128 Stat. 1911)

S. 476/P.L. 113–178

To amend the Chesapeake and Ohio Canal Development Act to extend to the Chesapeake and Ohio Canal National Historical Park Commission. (Sept. 26, 2014; 128 Stat. 1912)

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S.J. Res. 40/P.L. 113–184

Providing for the appointment of Michael Lynton as a citizen regent of the Board of Regents of the Smithsonian Institution. (Sept. 29, 2014; 128 Stat. 1951)

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