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**From:** [REDACTED]

**Sent:** Friday, December 14, 2018 1:45:35 PM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Bcc:**

**Subject:** FW: Disclosure seals and sample document - P&A Review Requested

Hi, Beth. Please find my analysis below. Let me know if you have any questions.

[REDACTED]

FRE 902 provides for evidence that is self-authenticating and require no extrinsic evidence of authenticity to be admitted. 902(1) requires documents to contain a “seal.” 902(11) requires documents to be “certified.” [REDACTED]

[REDACTED]

#### The Proposed 902(11) Seal.

FRE 902(11) provides that “Certified Domestic Records of a Regularly Conducted Activity” are self-authenticating. 902(11) requires that the document meet the requirements of FRE 803(6)(A)-(C). [REDACTED]

[REDACTED] 902(11) also requires that “[b]efore the trial . . . the proponent must give an adverse party reasonable written notice of the intent to offer the record—and must make the record and

certification available for inspection—so that the party has a fair opportunity to challenge them.” FRE 902(11). “The notice requirement in Rule[] 902(11) . . . is intended to give the opponent of the evidence a full opportunity to test the adequacy of the foundation set forth in the declaration.” 2000 Amendments Advisory Committee Notes Rule 902(11). Advance notice to the other party permits the evidence to be admitted without testimony of a foundation witness similar to the procedure in 18 U.S.C. § 3505. *See* Advisory Committee Notes 2000 Amendments 902(11); Advisory Committee Notes 2000 Amendments 803(6). 18 U.S.C. § 3505(b) requires a party intending to offer evidence without a foundation witness provide written notice to the opposing party “at the arraignment or as soon after the arraignment as practicable . . . .” Consequently, advance notice to opposing counsel is required for evidence to be self-authenticated pursuant to 902(11).

To conform with the requirements of 902(11), a declaration or affidavit is required when asserting the documents in question meet the requirements of FRE 803(6)(A)-(C).

The Advisory Committee Notes for 902(11) indicates that a declaration “that satisfies 28 U.S.C. § 1746 would satisfy the declaration requirement of Rule 902(11), as would any comparable certification under oath.” 28 U.S.C. § 1746 lays out the following form for documents executed within the United States: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).”

### The Proposed 902(1) Seal

FRE 902(1) provides that “Domestic Public Documents that are Sealed and Signed” are self-authenticating if the document bears a seal of an agency of the United States and a signature of attestation.

Note to Paragraph 1 of the 1972 Proposed Rules for 902 indicates 902(1) is “of broad application.” A seal is permissible under 902(1)(A) if the seal “purport[s] to be that of the United States” or a political subdivision or agency thereof. However, the Advisory Committee Notes of 1972 for the Proposed Rule 902(1)(A) does reference “more than 50 provisions for judicial notice of official seals” in the United States Code. Judicial notice shall be taken of any seal prescribed under § 7514 which authorizes the Secretary of the Treasury to prescribe or modify seals of office for the district directors of internal revenue. 26 C.F.R. § 301.7514-1 provides the seals prescribed by the Secretary of Treasury pursuant to I.R.C. § 7514. FRE 902(1)(A) does not require the seal to be statutorily adopted to qualify as a valid seal.